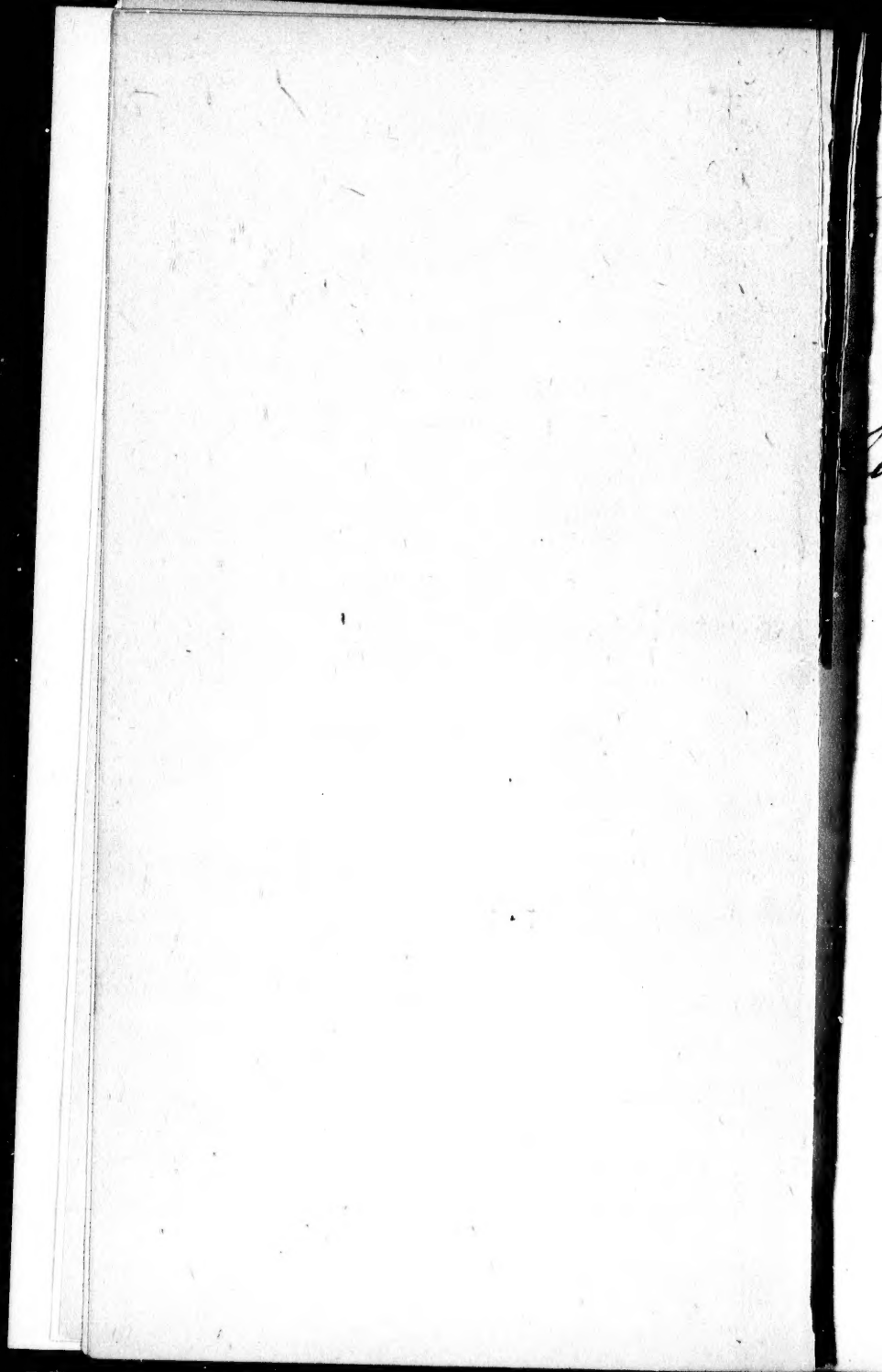




Report of the
REPORT
Commission OF THE *Review*
SELECT COMMITTEE

TO WHICH WAS REFERRED

Landfield OF *McDonald*
THE ANSWER
HIS EXCELLENCY, THE LIEUT. GOVERNOR,

TO AN

ADDRESS

OF

THE HOUSE OF ASSEMBLY,

RELATIVE TO A RESPONSIBLE

EXECUTIVE COUNCIL.

Ordered by the House of Assembly to be printed.

TORONTO:

M. REYNOLDS, PRINTER.


1836.

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TO THE
HONORABLE THE COMMONS'
HOUSE OF ASSEMBLY.

The committee to whom was referred the correspondence between His Excellency the Lieutenant Governor and the late members of the Executive Council of this Province, having examined the various documents referred to them, and having carefully considered the subject discussed in the correspondence, submit the following

REPORT:

The committee are deeply convinced of the truth of Lord Glenelg's opinion that the present is an era of more difficulty and importance than any which has hitherto occurred in the history of this part of His Majesty's dominions," and not less are they convinced that the difficulty has been increased instead of being diminished, since the date of Lord Glenelg's despatch: It is at such a crisis that we are called to the discussion of a question of vital importance to the people of this Province: a question which in the opinion of the committee, is no less than this: whether we have, as we have been taught to believe, a Constitution, "the image and transcript of that of Great Britain," or have only a mutilated and degraded *Constitution*.

Present an era of difficulty.

The question whether we have a transcript of the British Constitution or not, a vital one.

The increasing dissatisfaction which has been produced, by the mal-administration of our provincial affairs, under Lieutenant Governors Gore, Maitland and

The mal-administration of former Governors have awakened the attention of the Colonial Office.

Colborne, has been so well known, and so general, that even the Colonial office seems to have been awakened to a sense of the necessity of ameliorating our condition by holding out the encouraging prospects of relief and reform. To our complaints, too long neglected and unredressed, attention was at length to be paid. Sir John Colborne, (with whose measures maxims and advisers His Majesty's subjects had long been dissatisfied) was removed, and a Lieutenant Governor was sent out, to administer the affairs of the Province, in such a way that the people should have reason to be attached to the parent State, from sentiments of affection and gratitude, as well as from principles of duty. As he was a stranger to the Province, to its affairs and history, to the wants, sentiments and habits of its inhabitants, and as the measures complained of under Sir John Colborne's administration had been attributed, in a great degree, if not altogether, to evil advisers, much anxiety was felt that the new Lieutenant Governor should call to the Executive Council persons in whose sound constitutional principles, integrity and prudence, the country could put confidence. The appointment of Messrs. Dunn, Baldwin and Rolph, therefore, afforded general and lively satisfaction; not unmixed, however, with serious apprehensions that the influence and presence of the old councillors, who were supposed to have advised Sir John Colborne, would embarrass His Excellency and the new Councillors, in the pursuit of a more impartial, conciliatory and constitutional system of Government. The House

The new Lt. Gov.
a stranger.

Appointments of
Dunn, Baldwin and
Rolph afforded satisfaction.

known, and so and the country were not then aware that his Executive Council had been used as a mere screen for the acts of the Lieutenant Governor; on the contrary it was generally understood, that they were consulted on the affairs of the Province.

Executive Council
a mere screen.

To our common and unredressed grievances, which to be paid, those measures, Majesty's subject) was removed, Governor was sent, of the Province, at the people, attached to the, of affection, principles of, to the Province, to the wants, inhabitants, of under, nistration had, degree, if not, much anxiety, enant Governor, tive Council, itutional principles, the country, appointment, and Rolph, and lively satisfaction, ver, with serious influence and, rs, who were, Sir John Col, s Excellency, he pursuit of, and constitution, The House

That the principles of the British Constitution were not put in practice as it regarded this Council, in one respect, was well known, and had been the subject of earliest complaint on the part of your Honorable House: we allude to the fact that persons had been appointed, or continued as Councillors, whose political opinions and principles were in opposition to those of the people and their Representatives, and in many cases to the expressed wishes and intentions of his Majesty's Government;—as for instance, the contemptuous treatment given to Lord Goderich's despatch, as well as to its noble author. But the country were ignorant how much the affairs of the Province had been conducted by the arbitrary will of the Lieutenant Governor himself, with no other counsel than the secret suggestions and recommendation of unsworn, irresponsible and unknown advisers.

Affairs of the Province conducted arbitrarily.

Much and justly as the people of the Province had been dissatisfied with the condition of our public affairs, they were nevertheless not aware of the extent to which the unconstitutional proceedings of the Lieutenant Governors of this Province had been carried.

Every day however discovers new cause of complaint on the one hand, and the contemptuous indifference with which all complaints are regarded on the other.

Every day discovers new cause of complaint.

From the documents referred to the Committee, it pretty plainly appears that the Lieutenant Governor had not consulted the Council at all after the new Councillors were sworn in—(See the representation of the Council, hereunto appended, marked A)—although, during the interval between that event and their resignation, three weeks of anxious expectation on the part of the people and their representatives had elapsed, and during that time, His Excellency had made various appointments, which he could not make advantageously or properly, without information and advice from some one.

His Exc'y. made various appointments without consulting his new Councillors.

His Exc'y. refused assent to felon's counsel bill.

His Excellency also refused to give the Royal Assent to a bill, demanded by justice and humanity, and passed for more than ten years, almost unanimously, by repeated and different Houses of Assembly although, during the present winter, Lord Gosford had informed the Legislature of Lower Canada, that the Royal Assent would be given by the King in Council, to a similar bill which had been passed by the Parliament of that Province, and reserved for the signification of His Majesty's pleasure. Upon this refusal to assent to a bill which had thus received the sanction and approbation of both Houses of Parliament in Lower Canada and both houses of Parliament in Upper Canada, and been approved of by His Majesty's Government, after deliberate consideration, it is plain that the Executive Council had never been consulted; and, indeed, all the measures subsequently adopted so disappointed expectation, as plainly to indicate either that the Council were not consulted

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, or that the old members, with the um
rage of the Lieutenant Governor, pre
ominated.

Your Committee are forced to believe
at the appointment of the new Council
rs, was a deceitful manoeuvre to gain
credit with the country for liberal feelings
and intentions, where none really existed;
or it was notorious, that His Excellency
had really given his confidence to, and was
acting under the influence of secret and
unsworn advisers. Under these circumstan
ces, the Council seem to have been led, (in
conformity indeed with a suggestion of His
Excellency himself,) to examine the nature
and extent of their duties, under the Con
stitutional Act, and having discussed the
subject with His Excellency, personally,
at the Council Board, they united, ten
days afterwards, in an unanimous and re
spectful representation, in writing, to His
Excellency, in which, after adverting to
the critical state of public affairs, and the
general discontent with the past adminis
tration, which no one can doubt, they state
their views of the Constitutional Act, (31
Geo. 3, chap. 31.) as it respects the Execu
tive Council; and draw from it the fol
lowing conclusion:

"*Firstly*—That there is, according to
that statute an Executive Council.

"*Secondly*—That they are appointed by
the King.

"*Thirdly*—That they are appointed to
advise the King, and his Representative,
upon '*the affairs of the Province*;'—no par
ticular affairs are specified; no limitation
to any particular time or subject."

Com. believes that
the appointment of
new Councillors was
a deceitful manoeu
vre.

The Council state
their views of the
Constitutional Act.

There is a Council
appointed by the
King

to advise on the af
fairs of the Province.

Lt. Governor may
reject advice.

Matters pertaining
to Heads of Depart-
ments reffd. to them.

His Exc'y. has gi-
ven erroneous acct.

They represent, that according to our Constitution, the Lieutenant Governor should consult the Executive Council upon the affairs of the Province generally, and not merely occasionally, although (except in certain cases where their concurrence is by statute expressly required,) His Excellency would still be at liberty to reject the advice when given; and they recommend, that, with the exception of those matters of so weighty or general a character as not properly to fall under any particular department, and therefore fitted for the deliberation of the Council collectively, the affairs of the Province should be distributed into departments, to the heads of which shall be referred such matters as obviously appertain to them respectively.

We have been careful to state the exact propositions of the late Council, as contained in their representation, because it is important to know what are the real points in controversy; and because His Excellency, in various public documents, has given (to use the mildest terms) a very erroneous account of these propositions. He describes them as attempting to divest him of his responsibility, and of his power and patronage, although nothing was proposed by the Council, except that which we have above stated.

Your Honorable House will observe that the late Executive Council in their representation to His Excellency, have placed their duties upon the most moderate scale. It is merely proposed that the affairs of the province should be submitted for their advice, before the Lieutenant Governor ex-

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ercise his own discretionary power upon
 them; and if the general business were
 as recommended, distributed into depart
 ments, it would obviously facilitate the re
 ference of any matter by His Excellency for
 information or advice. Yet this simple pro
 position, in the opinion of your committee
 so reasonable to a candid, and so accepta
 ble to any *well constituted mind*, is repelled
 by His Excellency with seeming indigna
 tion; and the Councillors, in a most arbi
 trary manner, coerced from their office,
 and, after their resignation, literally tra
 duced:—Upon such official conduct (what
 ever the station from which it comes) your
 committee cannot forbear freely to anim
 advert; for the country will in vain look
 for talented and honorable men to fill the
 public stations, and aid the conduct of
 public affairs, if subjected to ignominy and
 reproach, without vindication by the re
 presentatives of the people, whose highest
 interests in the King's Councils they have
 undertaken to serve.

His Exc'y. repels
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It is therefore with pain your committee
 notice in the conclusion of His Excellen
 cy's reply to the late Council—(hereto ap
 pended, marked B)—the discreditable alter
 native offered them. It appears from Mr. R.
 Baldwin's letter, that when he and his col
 leagues accepted the invitation to join the
 Executive Council, their political prin
 ciples were made known and very fully ex
 plained to Sir Francis Head; and when
 patiently waiting upon him more formally to
 receive a united invitation, it appears he
 accepted their services with the avowed re
 tention of the opinions they had hitherto
 publicly entertained and acted on, even

Mr. Baldwin & col
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 cepted office.

Declaring with great apparent frankness and magnanimity, that their seats in the Council would afford them a better opportunity of confidentially presenting and urging their views. With such a latitude professedly given them, it became their duty, in the opinion of your committee, upon assuming their office, to advise His Excellency upon the affairs of the province, and, in their opinion, as to the constitutional manner in which it might be best administered, in the terms of their oath "for the good of the King and this Province, and for the peace, rest and tranquility of the same:" such is the substance of Mr. Baldwin's manly and honorable letter.

Animated with these loyal and patriotic feelings, and conversant with the condition and expectation of the country, it appears they joined in the representation dated the 4th of March, 1836, (hereto appended, marked A)—embodying their united views in a manner unreserved, candid and respectful.

To this representation Sir F. Head sent a reply, also hereto appended (marked B.) concluding with the following words:

Answer of His
Excy. to resignation
of Council.

"The Lieutenant Governor assures the council, "that his estimation of their talents and integrity, as "well as his personal regard for them remain unshaken, and that he is not insensible of the difficulties "to which he will be exposed should they deem it "necessary to leave him. At the same time should "they be of opinion that the oath they have taken "requires them to retire from his confidence, rather "than from the *principles* they have avowed, he begs "that on his account, they will not for a moment hesitate to do so."

It appears to your committee that however sensible the Council might be, to the

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honor of being confidential advisers of the King and his Representative in this Province, and however anxious to avert the embarrassments his Excellency justly apprehended, yet having entered his Majesty's service with known principles, and as a duty communicated them officially, they could not honorably retire from these principles, to which, as their representation testified, they properly attached so much importance and truth. Hence upon this delicate subject Mr. Baldwin nobly observes, (see his letter in the Appendix, marked C.)

"Having in the representation alluded to but reiterated in a more formal manner in conjunction with my colleagues under the sanction of the oath, (which I had in the mean time taken) the same principles & opinions which his Excellency knew me to entertain previous to his honoring me with a seat in his council; however desirous I might be of giving my best support to His Excellency's Government, or of not hastily abandoning the important duties of my situation which had been most unwillingly assumed, I could not for a moment hesitate when the alternative presented to me was the abandonment either of my principles or my place."

Observations of
Mr. Baldwin.

Your Committee cannot hesitate to remark that this proposition of Sir Francis Head, in the secret council chamber, to retain them in his service, if they would retire from their principles, was highly objectionable, derogatory to the honor of the King, and demoralizing to the community.

Among the criminating views urged by His Excellency against the late Council, since the date of the correspondence, will be found a complaint against their concluding prayer as follows, that "should such a course not be deemed wise or admissible

Proposition of Sir
F. B. Head derogatory
to the honor of
the King.

Council requests
to be allowed to dis-
abuse the public.

"by the Lieutenant Governor, the Council
"most respectfully pray that they may be
"allowed to disabuse the public from a
"misapprehension of the nature and ex-
"tent of the duties confided to them."

This request might in the opinion of your
committee, have been answered by a frank
avowal of the alleged intention "after a
few moments more afforded for reflection"
to consult them to such an extent as to
render their prayer "practically useless."
But being in the strange misapprehension
of His Excellency "sworn to be *dumb*,"
and therefore kept by him religiously mute
from giving him any advice; the late Coun-
cil appear to your committee to have had
before them only two courses, viz: either
to obtain a more cordial and Constitution-
al intercourse with His Excellency, or dis-
creditably to keep up the prevailing pub-
lic deception, respecting their duties. If
the Council would have recanted, and kept
the *great secret*, viz: that there were no
secrets, they might, as the reply shews, have
dishonorably retained His Excellency's
confidence.

Council might have
dishonorably retain-
ed the confidence of
His Excellency.

But for what honest purpose could it be
desired not to undeceive the public, who
had so long, under a misapprehension of
the nature and duties of the Council, di-
rected their reproach against them as the
presumed concurrent advisers of misgov-
ernment? If it is *wrong* that the Council
should advise upon the "affairs of the Pro-
vince," is it *right* falsely to make the peo-
ple ascribe to them such duties?

Was it criminal, as is pretended, for
them to ask leave to communicate to the

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public, not any particular matter or their
advice upon it, but merely to correct a
public misapprehension of the nature and
extent of the duties confided to them?—
Was it generous or just for His Excellen-
cy, under pretence of the oath they had
taken, to compel the new Councillors to
subject themselves unjustly to the same re-
proach, as had been heaped upon the old
ones, for supposed acts they had never
done, and for supposed advice which had
never been asked or given? Was it mag-
animous or honorable for a Lieutenant
Governor, who professed to take upon
himself all responsibility for all misman-
agement of our affairs, to screen himself
from censure by allowing it to be unjustly
imputed to a "*dumb*," "*defenceless*" Council?
Would it not have been more manly to
have said, "*I am the only responsible person;*
you shall not be blamed for my acts; therefore
abuse the public that they may never charge
against you what is wholly chargeable against
me?" But on the contrary His Excellency
condemns them, almost as violators of
their oath for desiring to undeceive the
country, and for betraying so much sensi-
tiveness about mere character and reputa-
tion, as to undervalue the honor of inno-
cently braving all the odium of His Excel-
lency's unadvised misdoings in his govern-
ment. This is a species of political gal-
lantry from which the Council seem hum-
bled to have wished to be relieved; a wish,
however, which His Excellency indignant-
ly represents.

Your Committee are unable to discover
the conduct of the late Council, any
grounds for the reiterated assertion of His

Observations of
Committee.

Committee not a-
ble to discover in
conduct of Council

a desire to deprive
His Exc'y. of patronage.

Excellency, that they wished to deprive him of his responsibility and patronage.

The responsibility of the Governor should, in the opinion of your Committee consist, in a great measure, of selecting good Councillors, and acting with their good and rejecting their bad advice. The advice of the Executive Council, given in the terms lately proposed by them, would inform the judgment, but not impair the responsibility of His Excellency. A Jury are not the less responsible for their verdict, because they hear evidence, the Council and the Judge. And to your Committee it seems puerile to urge, that should an Executive Council give advice to Lieutenant Governor, he could have no responsibility in acting on it. The same may be said about the patronage. The patronage chiefly consists of appointments to all public offices throughout the country; and as His Excellency professes himself to your Honorable House, to be a stranger lately arrived amongst us, unacquainted even with the political differences of the Mother Country, and, necessarily (as all his successors from England must be) wholly ignorant of this Province, seems rational and prudent, that before making any such appointments to office he should receive the advice of the Council in conjunction with whom he could make better enquiries and arrive at satisfactory conclusions, than by his own unaided judgment.

It is but rational
that His Exc'y. shou'd
be advised in making
appointments.

When, therefore, His Excellency contends that he will not take advice upon the affairs of the Province, because it takes

to deprive his office of patronage. The Governor or Committee, of selecting with their advice. The Council, given them, would not impair the efficacy. A Jun- for their ver- once, the Coun- your Commi- re, that shoul- e advice to- could have it. The same patronage. The of appointment- hout the coun- professes him- louse, to be- ongst us, una- ical difference- d, necessari- England mu- is Province, nt, that belo- nents to offic- e of the Cou- hom he cou- arrive at sa- a unaided ju- way his responsibility, and that he will not consult the Council about appointments to office, because it will take away his patronage, it practically amounts to a den- ation, that he will carry on an arbitrary government, not because it is the best calculated to advance the peace and prosperity of the country, but for the selfish purpose of displaying the extent of his power—for it is not pretended, that the constitution prevents him from consulting with the Council on all matters, if he was fully desirous of doing so.

But the Lieutenant Governor deliberately declares himself to be responsible for his Council as well as for himself to His Majesty's government in England.— This kind of responsibility (undeniably existing) we have witnessed in the examples of all preceding Governors, and experience, dearly bought, has proved that liability to a patron in Downing Street for thousand miles off, is unavailing for any practical purpose. And even assuming this responsibility to continue, it does not lessen the manifest expediency and wisdom of guarding against even intentional errors in the conduct of our affairs by the intervention of sworn advice from Councillors selected by the Lieutenant Governor himself for their talents and integrity. The counsel given could produce here safe and happy government, and instead of destroying responsibility in England, would only lessen the necessity of a frequent appeal to the Crown and to the British Parliament, for redress of grievances, even of the most inordinate kind.

Liability to a Patron in Downing St. quite unavailing.

Your committee cannot forbear to notice the Lieutenant Governor's charge against four of the late Executive Councillors, whom he accuses with "having changed their opinions." Sir Francis Head is the last person who should have promulgated such a reflection against any of the late servants, particularly against those to whom he had introduced gentlemen avowing the opinions, which, it is insinuated, they imbibed. How could they suppose that His Excellency was angrily opposed to the principles he had infused into the council? But it seems he formed the Council of persons who, he thought, entertained opposite and discordant sentiments, and because, instead of quarrelling and wrangling among themselves, they discovered in their proceeding, a happy and useful concord in public business, he dismisses them for their unanimity, and then ungraciously charges one part with holding unconstitutional views, and the other part with being converts to them. And all these attacks are made upon them by His Excellency, who at the same time declares them to be *defenceless* "because being sworn to silence, they are deprived by this fact, as well as by the constitution, of all power to defend themselves." Nevertheless to your Honorable House, and in answer to popular addresses, he is continually urging constructions and statements against the Council, which ought in fairness (and on every principle of honor) to be allowed to be answered or never to have been made.

Your Committee feel surprised at the public answer of His Excellency to the ad-

Committee surprised
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 mittee have procured a certified copy of
 his address and answer, from His Excel-
 lency's private secretary, which they here-
 into annex, marked D.—in which he
 expresses "*astonishment*," that those prin-
 ciples "*suddenly* appeared from a *quarter*
 om which *he certainly least expected it*,
 om the Executive Council itself." It is
 ut just to the late Council to remark, that
 the announcement of such principles from
 Council into which His Excellency had
 himself knowingly introduced them with
 Mr. Baldwin and his coadjutors, could not,
 candour, be a matter of "*astonishment*;"
 or can your committee consider it done
 suddenly" after an amicable verbal discus-
 sion with him in Council ten days before,
 that it could be "*certainly least expect-*
 ed" from sworn advisers known to him to
 entertain these principles, and bound by
 His Excellency's invitation to the frank in-
 terchange of opinions, as well as by every
 obligation of honor and duty, to express
 them to him. It is, therefore, plain that
 the principles are regarded with "*aston-*
 ishment," by His Excellency, when there
 was no reason to feel it; are denounced
 as obtruded by the late Council "*sudden-*
 ly," after they had been debated for *WEEKS*;
 are condemned as emanating from a "*quar-*
 ter" into which he had *himself* knowingly
 introduced them; and are said to have
 been "*least expected*" from men whom he
 had *himself* in Council sworn *fearlessly* to
 use him according to their honest con-
 ceptions.

The late Council are charged by His
 Excellency in the last mentioned document

answer to Corpora-
 tion.

Principles regard-
 ed with astonishm't.
 by His Exc'y. with-
 out reason.

The Lt. Governor
 charges the late Coun-
 cil with

with resting their claims in the appended representation, very nearly on the following grounds :

assuming responsibility on popular opinion, on the *intention* of the Constitutional Act.

"1st—That the responsibility they assume being "a popular one, daily increasing, is consequently "the law of the land;" and "2ndly—That though "the powers they require are no where expressed in "the Constitutional Act, they were evidently intended to have been inserted."

Such charges are at variance with candour.

Your Committee have compared the above professed epitome of the grounds taken by the late Council, with the representation itself, from which it is avowedly deduced; and the grounds, thus charged by His Excellency against the Council as assumed by them, are so utterly & so obviously at variance with *candour* as to defy any courteous commentary without injustice to the *Constitutional* question at issue.

In the answer of His Excellency, accompanying the documents between himself and the Council he states, that

His Excellency states that he was about to lay important matter before the Council, when this question was immediately agitated.

"With every desire to consult my Council, I was "preparing for their consideration important remedial measures, which I conceived it would be advisable "to adopt, and had they but afforded me those few "moments for reflection, which from my sudden arrival among you, I fancied I might fairly claim as my "due, the question which so *unnecessarily* they have "agitated, would have proved practically, to be useful "less."

Such a statement, reserved for subsequent disclosure, betrays disingenuousness:

It is singular that this latent intention of His Excellency is not even hinted in his reply to the Council, but is reserved for disclosure as a means of criminating them, after their resignation was effected by the alternative of "abandoning their principles or their place." Considering the relation which ought to subsist between a Govern-

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nor and the Executive Council of the Province, it was not, in the opinion of your committee, dealing ingenuously with them, to take most important steps without their advice or even knowledge;—and it must have been a humiliating position for gentlemen, distinguished as His Excellency admits, for “their talents and integrity,” to imagine that His Excellency was “preparing important remedial measures,” not in dignified and constitutional co-operation with his highly gifted Council, but by the aid of unsworn and irresponsible persons unentitled to confidence. Such conduct did not redeem the pledge to the late Council, upon accepting office, of his “implicit confidence;” and when, after three weeks merely nominal Councillorship, they resign, it is alleged “had they afforded him a *few moments* for reflection, the question which so unnecessarily they have agitated would have proved practically useless. If such is the truth, if it was intended (after a *few moments* for reflection,) to consult the late Council to such an extent as to render their representation “practically useless,” why did His Excellency require them to “abandon their principles or their place?” Why did he in his own language “drag the question into day-light, in order that it might be openly, fairly and constitutionally discussed,” when it was his avowed intention, shortly to render the agitation of it “practically useless?” Under such a prospect it was inexcusable MISRULE to fill the country with consternation and dismay, upon a matter respecting which, he had the *power* and *professes* to have had the *intention*, to satisfy public expectation;

and very humiliating to gentlemen whom His Excellency had spoken so highly of, taking in their place unsworn advisers.

Such conduct did not redeem the pledge of “implicit confidence.”

If but a *few moments* were required for reflection, why require them to abandon their principles?

It was MISRULE, to thus fill the country with dismay, when having the *power* & *professing* to have had the *intention* to give satisfaction.

It was most *ungenerous* to treat the late Council with such indignity considering their peculiar circumstances.

The representation of the late Council, was an unanimous act, of persons of different political *creeds*—

was not to serve a political party, but calculated to meet all parties.

The Council proceeded Constitutionally and respectfully

—and after importuning the Honorable J. H. Dunn and R. Baldwin, Esq., under an overwhelming pressure of recent domestic affliction, and Doctor Rolph amidst professional avocations, in voluntary retirement from public life, to join the Council, in order to aid the King's Government, it was most *ungenerous* to almost expel them from the Council, merely for offering a suggestion which, after a few moments more reflection, he intended so far to follow as to render their representation "practically useless."

It should be particularly observed, that the representation of the late Council was signed by all the Councillors; was the deliberate, unanimous conscientious opinion of gentlemen of different political parties, —of those who had long been in office and of those who had just been appointed —not as to a mere theoretical question, but as to a question practically affecting their own duties, under the constitution of the country; was not a movement to serve any political party, but was calculated to meet the views and wishes of all parties; and that being in writing, His Excellency could take his own time to consider it. Finally, as this was a matter of no ordinary importance and as the Councillors had delivered their views in writing signed by all, (a proper and constitutional proceeding on such great questions in the judgment of the committee, and certainly the most respectful to His Excellency,) it would have been no great stretch of courtesy to the unanimous and confidential advice of his Councillors, if, in case he differed from them, he had referred it, with

His observations, to His Majesty's government, instead of indulging his arbitrary spirit and requiring them to resign for the mere expression to him in confidence of their sentiments. It may be observed that without being obliged to concede the principle maintained by him, or to compromise his character or his dignity, he might frankly have consulted them, in the meantime, of his own accord, on all important matters, and have obtained thereby advice and information, which would have been highly useful to him and which, in fact, he necessarily must seek somewhere. By this means, he would have prevented the present excitement, and the discussion which has been forced upon the country of forms of Government and fundamental principles of the Constitution; a discussion which common prudence will admonish all settled governments to avoid. That he might have consulted them upon all the affairs of the Province even if he was not obliged to do it, there can be no doubt. Such a course if not enjoined is evidently not forbidden by the Constitution, or by the Royal Instructions, or by any law or authority whatever. It is not borrowed from a republican government or republican institutions, but is a British usage and according to British principles. It seems however from his own declaration that he was waiting for an opportunity to force this discussion upon the country; or in his own language "to drag this new theory into day-light," in order that it might be discussed. The Committee and the House are therefore "dragged" into the discussion of it, not by the Executive Council, not by any factions or party pro-

His Excellency might have shown courtesy, by referring the case to His Majesty,

and still have consulted them upon important matters,

and have prevented the present excitement in the country,

which is very necessary to be avoided.

Such a course not forbidden by the Constitution or Royal Instructions—

But according to British principles.

This waiting to "drag into day-light" this subject, has "dragged" the House into its discussion by the Governor himself,

ceeding, but by His Excellency himself who, it appears, notwithstanding his short arrival in the country, rather courted the discussion of it than otherwise, for it will be observed that he stated in answer to the corporation as follows :

For he courted the discussion and used no means for preventing it, until he could "drag it into day-light."

Hitherto the Executive Council have sustained the public censures of misrule,

and Lieut. Governors have been treated with respect.

The assumption of all responsibility by the Governor, is a matter of great concern.

Such odium as the Executive Council have been exposed to, is repugnant to the British Constitution.

" Finding that this new theory was rapidly gaining ground, I resolved to offer it no secret *opposition*, nor in any way to exert my influence to oppose it, but I DETERMINED the very first time it should come well within my reach that I would DRAG it into day-light," &c.

The committee cannot but remark that hitherto the Executive Council have sustained the public censures for the misconduct of our affairs upon which it has always been supposed they have given a concurrent advice,—and upon that account past Lieutenant Governors as well as the British Government have sustained their office in dignity and been treated personally with respect. It is therefore, with great concern we learn from various public documents emanating from His Excellency upon this subject, that he desires to relieve the council from all participation of popular displeasure, inevitable in a country with liberal institutions, and to assume it himself. The representation of the late Council fully expresses the odium which its members had silently endured, and it appears to your committee repugnant to the British Constitution and inconsistent with the necessary preservation of respect for the Kingly office to bring his representative into personal collision with the people in every period of excitement, and render him the ostensible person for accusation and complaint. Should

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such a doctrine prevail, the royal station in the colony will be seriously impaired its dignity and be almost unavoidably introduced in parliamentary debate, and become the point upon which will be concentrated every manifestation of popular indignation. If all the odium which has been poured upon the old Executive Council, had been charged, as His Excellency proposes, upon the Lieutenant Governors, their residence would not be tolerable, and their very authority would become weakened or destroyed.

In the conclusions of the late Executive Councillors, the committee fully concur, and cannot but express their surprise that His Excellency should not be convinced by the clear and unanswerable argument contained in their representation to him. His Excellency however, in one of his appeals to popular feeling, broadly declares that the Act of 31 Geo. 3, chap. 31, creates no Executive Council, and says, "if any one tells you that it does, read the act for yourselves."

In humble imitation of this great authority, we affirm confidently, that *according to that statute there MUST BE an Executive Council appointed by the King, for the affairs of this Province*; and to any one who is led by the strong assertions of His Excellency to doubt it, we say "read the act for yourselves," especially such passages as this [section 34] "together with such Executive council as shall be appointed by His His Majesty for the affairs of such Province," and such passages as this [section 39]—"with the advice of such Executive Council as shall have been appointed by His

Such doctrine will impair the dignity of the royal station, & introduce it into parliamentary debate.

All the odium attached to the Executive Council, if assumed by the Lieut. Governors, would render their residence intolerable, & weaken their authority.

The Committee agree in the conclusions of the late Council, although the Governor declares the 31st Geo. 3, creates no Executive Council.

In contradiction, the Committee affirm there MUST BE an Executive Council,

which is fully confirmed by the Act itself.

Majesty, his heirs or successors, within such Province *for the affairs thereof*;" and such passages as this, [section 7,] "before such Executive Council as shall have been appointed by His Majesty, his heirs or successors within such Province *for the AFFAIRS thereof*;" and such passages as this, "as such Governor, Lieutenant Governor, or person administering the Government shall with the advice of the said Executive council judge to be expedient under the then existing circumstances;" all of which passages are found in the act. On this subject the committee refer to the conclusive argument of the Executive Councillors in the communication which seems to have disturbed His Excellency so much, amidst his alleged preparation of "*important remedial measures*," and conclude, that according to the Constitutional Act, there must be an Executive Council; that they are appointed by the King, and that they are appointed to advise upon the affairs of this Province, generally, and not merely upon particular affairs or upon particular occasions, are propositions which are demonstrable from the express terms, as well as from the spirit and evident intention of that act, (as has been shewn by the late Executive Councillors) and may, moreover, be inferred from the absence of every thing of a contrary import in the statute.

The Executive Council and their duties are alluded to in other Acts, in terms equally comprehensive.

In other statutes besides that just referred to, both Imperial Statutes & Provincial Statutes the Executive Council is noticed, and their duties are alluded to in terms equally comprehensive.—[See the Provincial Statute 34 Geo. 3, chap 2, sec. 33—and the British Statutes 6 Geo. 4, chap.

114, sec. 30—and 7th and 8th Geo. 4, chap. 62, sec. 1.] From these statutes it will be seen that the Executive Council is “the Council of the Province,” “appointed for the affairs thereof,” and not His Excellency’s Council, or appointed for particular affairs or any particular purpose. They are not, as he says they are, appointed to serve HIM; they are the Council of the Province, “appointed for the affairs of the Province.” The distinction of His Excellency between the Council serving him and not the people, is calculated to awaken much concern, and seriously impair that identity of interest and purpose which (under the presumption of our enjoying the British Constitution) we always supposed to exist between the King and the People. Indeed it has been a universal belief, founded as your committee believes in unerring principles, that both the Privy Council at Home, and the Executive Council in this Province, are the servants of, or instruments for the dispensing of good government; any attempt to put up any conflicting interests between the King and the People, by creating a belief that in serving the crown they do not serve the country, is erroneous in theory and mischievous in practice.

His Excellency repeatedly asserts that no Executive Council was created by the British Act 31st Geo. 3d. chap. 31, and says, “as regards even its existence the most liberal construction which can possibly be put upon the said Act only amounts to this—That as an Executive Council was evidently intended to exist, the remnant of the old one ought not to be deem-

They are not appointed to serve the Governor but the Province.

The Privy Council at home and the Executive Council here have been considered as servants for dispensing good government—any other opinion is erroneous in theory & mischievous in practice.

The Lt. Governor asserts the old council existed until the new one was appointed.

ed totally extinct until its successor was appointed."

There was no such a body as "an old Council" of this Province, it was called a *Legislative Council*, for the affairs of the old Province of Quebec—and the first clause of the 31st of the King annulled or destroyed that Council.

In opposition to this sweeping and positive declaration, the committee must remark, that there was no such thing as "an old Council" of this Province, and though there had been a Council created for the affairs of the old Province of Quebec, by the British Act 14th Geo. 3, chap. 83, this Council was called a *Legislative Council* and not an *Executive Council*; and your committee also deem it worthy of remark, that this Council is spoken of at the same time in the said 14th Geo. 3, as is the *Executive Council* of this Province in the 31st of the King, viz: "a Council for the affairs of the Province of Quebec;" and moreover, the very first clause of the 31st Geo. 3, chap. 31, repealed so much of the previous act as in any manner related to the appointment of that *Legislative Council*; or to the power given to them. Not "a remnant" of that old Council therefore existed. Every vestige of it was annihilated, and our committee are quite perplexed to understand how the *Legislative Council* of Quebec after its absolute and unconditional repeal could survive in even a remnant (as His Excellency says) 'till its successor was appointed:—if this is good reasoning on the part of His Excellency, the *Legislative Council* of Quebec (had no successor been appointed) would be now in operation, and by similar logic, by rescinding the instructions, His Excellency might undertake to revive it. But the last clause of the 31st Geo. 3, chap. 31, affords a conclusive answer to all His Excellency's assertions that an *Executive*

The last clause of the 31st of the King refutes all the answer.

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Council was not created by that Act; for it provides that during the interval, between the commencement of that statute in the Province, and the first meeting of the Provincial Legislature, the Lieutenant Governor, "with the consent of the major part of such Executive Council as *shall be appointed for the affairs of the Province,*" may make laws for the government thereof in the same manner as the old Legislative Council for the affairs of the Province of Quebec, could have made ordinances and laws for that Province. The Council thus authorised to assist in making laws, were an *Executive Council* not then appointed, but which were *to be* appointed, and were to be appointed *before the first meeting of the Provincial Parliament*; and were to be appointed, not for that particular purpose only, but "*for the affairs of the Province*" generally. And yet, according to His Excellency's opinion, this statute did not establish an Executive Council at all!—While in his reply to the late Council, he says, "To enable the Lieutenant Governor to perform the arduous duties of his office, the Constitution has wisely provided him with an Executive Council competent to supply him with that local knowledge in which he may be deficient, and to whom he may apply for counsel and advice."

The committee, without hesitation, affirm, that this Act as much creates or requires the appointment of an Executive Council, for the affairs of the Province, as it creates or requires the appointment of a Governor, Lieutenant Governor, or person to administer the government of this Pro-

tions that an Executive was not created by the Constitutional Act.

The Executive Council was to be appointed before the first meeting of the Provincial Parliament

A contradictory opinion of His Excellency.

The 31st of the King as much creates an Executive Council as it appoints a person to administer the Government.

The Lieut Governor or should consider the authority for his own office before he makes his assertions

The official character and authority of a Lieut. Governor no more necessary under the Constitutional Act, than is an Executive Council.

Lieut. Governor Simcoe had a very different view of the charter of our liberties, than had Sir F. B. Head.

And was better acquainted with its intentions.

vince. His Excellency, when he is promulgating and defending the novel doctrine, that he is the sole Minister as well as Representative of the King in this Province, would do well to consider upon what law his own authority rests, before he makes these rash assertions. The official character and authority of a Lieutenant Governor, are no more necessary under the Constitutional Act, or created by it, than is an Executive Council for the affairs of the Province; and if the Representative of the King can thus attempt by such bold assertions, upon such slight grounds, to explain away an important part of that law, which is the "great charter of our liberties," (from which His Excellency himself, in one of his appeals to the people, tells them they "should never allow a single letter to be substracted,")—(your committee append the address and answer, which they have received, duly certified by his Private Secretary, marked E); your committee can only hope that his example will have as little weight as his arguments.

It was in a very different spirit and with very different views from Sir Francis Bond Head, that Lieutenant Governor Simcoe regarded this great charter of our liberties. That great and good man, whose memory is embalmed in the affections and gratitude of the people of this Province, was a member of the British Parliament when our Constitutional Act was passed, and having served with distinguished honor in the Colonies, during the war which had not long before terminated, and having been acquainted with those brave and loyal people, who were about to seek in

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his Province an asylum under British laws and British Institutions, he was no doubt, freely consulted about the form of Government to be given to them.

The following extract from Lord Rawdon's observations in the House of Lords on the discussion on the passage of the 1st of the King, will give an idea of the estimation in which Governor Simcoe was held.

Lord Rawdon ex-
presses high opinion
of Governor Simcoe.

"His Lordship said, that the gentleman, whom he had heard was to be honored with the appointment of Governor, was one, of all others, the fittest and most to be wished for by the country. His intelligent mind, his generous and liberal manners, his active spirit, and peculiar abilities for that situation, rendered him, in an eminent degree, the properest person that Ministers could have selected for that appointment; and certain he was, that the choice would redound to their honor and credit.

"If Canada was to be governed under the present bill, it would be well for this country and well for Canada, that Colonel Simcoe was the Governor."

When the British Nation conceded to the United States, the right of forming a free government for themselves, after their own choice, it is scarcely credible, that they intended to confer a Constitution, less acceptable, upon the Loyalists, who had bought, bled and sacrificed their property and homes in defence of the Unity of the Empire. And it does seem humiliating to your committee, after the lapse of half a century, to find a new Lieutenant Governor

It was not to be supposed that it was intended to confer a less acceptable form of Government on the Loyalists than was conceded to the United States.

drawing so unfavorable a contrast between our local institutions and those from which they were borrowed, as to subject us to his arbitrary Government by superseding the functions of that important branch of the Constitution, called the Executive Council.

The Government of this Province was the subject of an interesting debate in the British Parliament.

Governor Simcoe, from the part he took in the debate, his being the bearer of the Statute, and 1st Lieut. Governor, was well qualified to explain the new Constitution and describe its features.

Governor Simcoe's Address to the Legislature at its first Session.

The Government of this Province was in fact the subject of one of the most interesting and memorable debates ever witnessed in the British Parliament; and while Mr. Fox urged the extension of the elective principle in the new Constitution further than it existed in the British Constitution, no one proposed that the form of government should be less popular or less free. Governor Simcoe heard the debates on this subject, and in fact, took part in them. He was the bearer of the Act to this country—was the first Lieutenant Governor of the Province, and was well qualified, and appears to have been authorised by His Majesty's government to explain to the people the new Constitution which was established for their benefit. This enlightened British Statesman and Legislator, who certainly knew what the principles of the British Constitution were on the very opening of the first Session of the first Provincial Parliament, addressed the Legislature from the Throne, and in the King's name, in the following terms:

"I have summoned you together under the authority of an Act of the Parliament of Great Britain, passed last year, which has established the British Constitution, and all the forms which secure and maintain it in this distant country."

"The wisdom and beneficence of our most Gracious Sovereign and the British Parliament, have been evi-

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mently proved, not only in imparting to us the *same Form of Government* but also in securing the benefit, by the many provisions that guard this memorable Act; so that the blessings of our invaluable Constitution, thus protected and amplified, we may hope, will be extended to the remotest posterity."

The great and momentous trusts and duties, which have been committed to the Representatives of this Province, in a degree infinitely beyond whatever till this period have distinguished any other Colony, have originated from the British Nation upon a just consideration of the energy and hazard with which its inhabitants have so conspicuously supported and defended the *British Constitution*."

Still more striking was the following language used by him, as the King's Representative, from the Throne, in the speech with which he closed that Session:

"At this juncture I particularly recommend to you to explain, that this Province is singularly blest, not with a mutilated Constitution, but with a Constitution which has stood the TEST OF EXPERIENCE, and is THE VERY IMAGE AND TRANSCRIPT of that of Great Britain."

Such were the emphatic words of this great and good man. Were they, after all, mere delusion? An empty sounding, meaningless mockery? So they are now regarded by His Excellency who, in answer to an address from the inhabitants of the city of Toronto, declares that, it would be *unreasonable* to expect that the people of this Province should be RUINED in vainly attempting to be the "exact image and transcript of the British Constitution," and that "the Constitution which His Britannic Majesty George the Third granted to this Province, ordained no such ABSURDITIES." That this is strong language the committee admit; but it is language which they have read with pain. The "absurdities" in which His Excellency's doctrines

Address at close
of the same Session.

Notwithstanding
the manner the above
declarations are treated,
it is to be hoped,
they will yet be fully
realized.

have involved him, must be apparent to every one, from this "vain attempt" to depreciate the authority and tarnish the memory of Simcoe, the first and ablest of our Governors, by holding him out, either as being unable from want of knowledge or discernment to judge whether our Constitution was "an exact image and transcript of that of Great Britain," or as being an artful and unprincipled deceiver, attempting in the name of the King to palm off on a *confiding* and *deserving* people, a "*multiplied Constitution*," by a mere high-sounding flourish of words. In despite, however, of His Excellency's sneers, this testimony of Governor Simcoe stands recorded on the Journals of your House, a solemn assurance in the name of the King that his subjects in this Province shall have all the blessings of the *British Constitution*, secured and "*AMPLIFIED*" to them and their children; a pledge that we trust will yet be made good to them, to the disappointment of any Lieutenant Governor who may *deride* their expectations and oppose their wishes and constitutional rights.

Sentiments similar to those of Governor Simcoe have been expressed by succeeding Lieutenant Governors; and by persons of all classes and creeds who have ever treated on the subject, altho' some have demurred that while we were entitled by the 31st of the King to all the blessings of the British Constitution, that while it was held out to us in theory and by profession it was denied (in some respects) in practice, yet all have agreed that it was guaranteed to us by the Constitution,—and those who have heretofore complained of the want of it in practice, have been char-

All subsequent periods have carried with them a general argument to the views of Governor Simcoe.

apparent to be demagogues, grievance mongers and disturbers of the public peace by Lieutenant Governors and their adherents. The records and public documents of the Province are filled with expressions (sometimes explicitly and at other times incidentally mentioned) calculated to impress the belief that we were entitled to the full enjoyment of all the blessings flowing from the Constitution of Great Britain, and what is peculiarly striking is, that amidst all this multitude of witnesses in favor of our right to the British Constitution with all its blessings and benefits, that not even a hint to the contrary was ever heard from any of them; and it has been reserved for Sir Francis Bond Head in 1836 to discover that our Constitution is different from the British Constitution, and that it would be foolish and ruinous for us to introduce the British Constitution if we could, and that any attempts to do it, would be vain. Whatever evils we suffer under our present non-descript Constitution, which even Sir Francis admits are so great and oppressive as to require "*important remedial measures*" WITHOUT "*DELAY*," which "our Sovereign has ORDAINED" and "which he is here to execute," we should console ourselves, according to his opinion, with one animating and delightful reflection, namely: we are not, and cannot be CURSED with the *British Constitution*. According to his doctrine the Constitutional Act *ordained* no such *absurdities*, and the Royal Instructions were equally *gracious* and careful to protect us from that terrible evil and calamity, the British Constitution.

If Governor Simcoe could not alter the Charter,

Neither can Sir F. B. Head impose upon us a mutilated Constitution.

It has been observed by His Excellency in one of his public expositions, that Simcoe "could not alter the charter committed to his charge," or render it, what His Excellency asserts it is not, the very "image and transcript of the British Constitution."

Your committee in imitation will say, neither can Sir Francis Head by his destructive assertions impose upon us a "mutilated constitution," nor has he the right to impose upon Upper Canada the arbitrary government of Russia or Constantinople, in place of the genuine transcript of which Simcoe was the bearer. But altho' Simcoe could not alter the law, and was too great and good a man to do it, yet he never had a successor who had equal pretensions to expound the meaning, elucidate the provisions, and explain the scope of the new constitution. He who fought with the U. E. Loyalists in the American war and knew the worth and claims of the men for whom the constitution was generously designed; he who sat and spoke in the senate in which the law was passed, who was moreover entrusted with the duty of putting it into operation, and who from the Throne solemnly declared the magnanimous gift of the British Constitution, to those who had been driven by their loyalty to seek an asylum under it, was surely better and more competent authority respecting that law & constitution, than a gentleman nearly half a century afterwards, who cannot see that the law creates an Executive Council, but can see the vestige of a Legislative Council surviving its absolute repeal, until a succe-

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sor was appointed; and that "in govern-
ment, IMPARTIALITY is better than KNOW-
LEDGE." The Instructions indeed, are in
his eyes an *important document*; for accord-
ing to His Excellency's views, the Execu-
tive Council was regularly constituted and
declared in the "*the King's Instructions*" &
of course could not have existed before it
was so constituted. A quotation is made
by His Excellency from these Instructions
from which he argues, that the Council
are only to be consulted occasionally. A
copy of these Instructions have been fur-
nished to Your Honorable House by the
Lieutenant Governor, your Committee
found with surprise not only that His Ex-
cellency had given a GARBLED extract in
his quotation, but also that these Instruc-
tions "*in which an Executive Council was reg-
ularly constituted and declared,*" according
to His Excellency's opinion, were actu-
ally dated in 1818! The Executive Coun-
cil of this Province was therefore in His
Excellency's opinion regularly constituted
and declared in 1818!

Upon reference to the whole of these
Instructions however, it will be found they
are not less liberal and comprehensive
than the constitutional act, had they been
honorably interpreted and acted upon.—
Your Committee deem it important that
the instructions which have been so long
kept in secret, should be made public, es-
pecially as they seem to be viewed by His
Excellency, to be of as much if not of
more importance than the Constitutional
Act, and therefore beg to append them to
this Report, marked F.

The King's In-
structions, an impor-
tant document.

A copy furnished
by Lieut. Governor.

A Garbled extract
given.

Instructions dated
1818.

Instructions ap-
pended.

Extract by His
Excellency from the
Instructions.

By section 8, as quoted by His Excellency, it was declared "that *to the end* that our said Executive Council may be assisting to you in ALL AFFAIRS relating to our service, you are to communicate to them such and so many of our Instructions, wherein their advice is mentioned to be requisite, and likewise all such others from time to time as you shall find convenient for our service to be imparted to them."

Correction of the
extract.

Upon an examination of the instructions themselves, it appears that this is a *garbled* extract; for in the instructions, the words are, "you are to communicate such and so many of THESE our instructions," &c. and your committee cannot but notice that the omission was calculated to favour the inference which His Excellency was wishing to draw. From this extract it appears, that the Executive Council was to be *assisting* to the Lieutenant Governor "in ALL AFFAIRS relating to the King's service," an expression which His Excellency in doctrine and practice has construed to mean "a *few affairs* relating to the King's service."

Extract favorable
to Governor's views.

True meaning of
the passage.

As the Council were to be assisting "*in all affairs*," the communication to them of the instructions, or any part of them, could not be intended to limit a duty, already so largely and expressly prescribed, especially as the communication was to be made "TO THE END, that they may be assisting in ALL AFFAIRS" but was merely to give the Council such and so many of the King's Instructions as were necessary to enable them effectually to advise upon those affairs, respecting which the King had in his

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His Excellency, the end that may be assisting to our duty to them instructions, intended to be others from convenient to them."

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Instructions imparted his precise pleasure ; for without such a communication of the instructions, the Council might from ignorance of them, adopt a course unintentionally opposite to them. It appears therefore to Your Committee, that even according to the instructions so *illiberally* and *unfairly* construed by His Excellency against our just rights, the Executive Council were generously intended by His Majesty's Government to advise upon "ALL AFFAIRS," and that the instructions were communicated merely to enable them to do it.

The oath taken by the Executive Council-
cillors, of which a copy hereunto annexed
duly certified in the appendix (marked G) is
equally comprehensive. It is the same as the
Privy Councillors' oath. Your Committee
would ask, does not the Privy Councillors'
oath prescribe his duties? Are there any im-
portant duties incumbent on him which
he is not sworn to fulfil? The oath being
the same, the Executive Councillors are
therefore bound by their oath to perform
the same duties that the Privy Councillors
(including His Majesty's Cabinet Coun-
cillors) are bound by their oath to dis-
charge. His Excellency nevertheless in
one of the communications which he has
made to the people of Toronto, and which
was plainly intended for *popular effect*, says,
that it is in his *judgment* "an oath of non-
responsibility to the people;" so that accord-
ing to His Excellency's views, *His Majes-
ty's Cabinet Councillors are sworn not to be
responsible to the people!* It may be worth
while to notice for a moment, the resem-
blance between the Executive Council and

Copy of Executive
Councillors' oath ap-
pendix,

Same as Privy Coun-
cillors' oath,

As requiring same
duties,

His Excellency's
views of it.

Comparative duties
of Privy Councillors
and Executive Coun-
cillors.

His Majesty's Privy Council. Both are appointed by the King, and both are removable at pleasure. The members of both are indefinite; the King may increase or diminish them at his pleasure.—Privy Councillors are appointed without any commission, merely by nomination & taking the oath of office; so are Executive Councillors. In some cases the King is required by express enactment to do certain acts "with the advice of the Privy Council," that is, not contrary to their advice; in like manner the Lieutenant Governor is expressly required in some cases to act only "with the advice and consent of the Executive Council." The Privy Council is appointed for the affairs of the Kingdom; the Executive Council is appointed for the affairs of the Province. The oath of office of the Executive Councillors is copied from that of the Privy Councillors; so that the former are sworn to perform the same duties as the latter.

The relation between the King & Privy Council, and the Lieutenant Governor and Executive Council are similar.

Finally, the King is no more bound by any express law to consult the Privy Council on all affairs of his government, than the Lieutenant Governor is bound by express law to consult the Executive Council on all affairs of his government:—neither is the King any more forbidden to act without advice or upon the suggestions of secret and irresponsible advisers in the government of his kingdom, than the Lieutenant Governor is forbidden to govern the Province upon like advice. And his constitutional advisers, the members of the Privy Council, are no more responsible for the advice they give to him, than the

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Both are responsible for the advice given by them to the Lieutenant Governor.

Where then is the difference between the Privy Council in the United Kingdom and the Executive Council here? Is not the advice of such a council as necessary for the Lieutenant Governor as it would be for the King, if he were here? Is the *Representative of Sovereignty* so much wiser and *better* than the Sovereign *himself*; so much more acquainted with the affairs of the country in which he is a stranger to its history, and to the habits and opinions, interests and sentiments of the people, than the King is acquainted with the people among whom he was born and educated: has the Lieutenant Governor who expects after a few years to leave us, and whose future prospects and hopes as well as past associations give him a personal interest in a distant land, so much more at stake in the welfare of this country, than His Majesty has in the prosperity and happiness and affection of his people, and in the honor and dignity of his crown;—in short, do history and experience teach us that a Lieutenant Governor, at a distance of more than four thousand miles from his superiors, is so much more immaculate and infallible than his royal master, that he does not require the same councils which the constitution considers, and which an experiment of ages proves to be necessary for the King himself?

Even His Excellency admits that His Majesty should according to the constitution, be surrounded by advisers responsible to the country, and that the King must

The need of council is required for the Governor fully as much as to the King.

* The arguments in favor of responsible government in the old country equally applicable to this colony.

Responsible government not laid down in statute, but a principle of the constitution.

The principle has never been acted on in this country.

consult them in ALL the affairs of the kingdom. There is not an argument in support of the necessity of such a system that is not equally if not more applicable to this Colony, where the relative weight and influence of the popular branch upon the Government is so small compared with those of the similar body in the parent country.

That the affairs of the Kingdom should be conducted by the King, with the advice of known and responsible Councilors, is not a rule or proposition laid down in any statute, but is a principle that is an essential part of our Constitution, and if that part is destroyed, the Constitution is materially changed, it is no longer the British Constitution. This principle therefore has been established by the necessity of the case; and the same necessity, upon which it rests in the mother country exists here.

Your Committee will admit that this principle (in practice) has been hitherto disregarded in the government of this Province, and what sort of government have we had? In what condition has it put us? Let the records of Your Honorable House; the statements of Executive Councilors of different political opinions; the King's Instructions to Sir Francis Bond Head; and his own admissions, answer. It has brought us, (according to the instructions) to "an era" of "great difficulty and importance," and we find even Sir Francis Bond Head addressing the people in the following terms: "The grievances of this Province must be corrected—impartial justice must be adminis-

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tered—the PEOPLE have asked for it—their SOVEREIGN has *ordained* it—I am here to execute his *gracious commands*—delay will only increase *impatience*. Those, however, who have long lived upon agitation, already too clearly see their danger; and with surprising alacrity, they are now taking every possible measure to prevent me from rooting up the tree of abuse, because they have built and feathered their nests in its branches."

Without remarking upon His Excellency's style, the committee would observe, that in the estimation of the Lieutenant Governor himself, the abuses of the government have become so extensive and deeply rooted, that agitators can actually live upon the exposure of them; although, how he would have been prevented from rooting up this tree of abuse, by receiving the advice and assistance of the Council, the Committee are at a loss to perceive.

Agitators live on exposing the abuses of the government.

It is to perpetuate and defend the system that has produced such effects that His Excellency exerts all the energies of his mind, and all the power and influence of his high office and exalted station. It is to this system that His Excellency has avowed such an ardent and unalterable attachment. That a Lieutenant Governor should secretly countenance and cherish a system, which leaves him entirely unchecked in the exercise of almost unlimited power, for which he is virtually irresponsible is not surprising; and more than one Lieutenant Governor, no doubt, while professing to maintain amongst us the principles of the British Constitution, has

The Lieutenant Governor seeks to perpetuate the system of abuse hitherto pursued.

secretly adopted this unconstitutional system, because it extended his power and enabled him to indulge his arbitrary will; but that His Excellency, at the very moment he admits and expatiates upon the abuses and grievances which it has produced, should announce his determination to continue it, and should gravely declare that the people of this Province would be ruined if they attempted to secure to themselves "*the very image and transcript of the British Constitution*," and that such a Constitution would be productive of the most vicious effects," is indeed astonishing.

Responsible government has been maintained by the House more than once.

The views of Your Honorable House on the right and necessity of a responsible Government, and of our Provincial administration being conducted on the principles of the British Constitution, have been more than once clearly and fully expressed, sometimes to His Majesty, and sometimes to the Lieutenant Governor; sometimes directly and at others, indirectly, as reference to your Journals will amply shew; but in the address to His Majesty, during the last Session, which address is hereto appended, (marked H) this principle was again urged—and further, a distinct, but respectful intimation was also made, that the House would enforce their rights by the Constitutional method of withholding the supplies for the support of the Government.

The following extracts from the evidence of James Stuart, Esquire, late Attorney General of Lower Canada, before a Committee of the House of Commons, 21st June, 1834, afford the opinion of an

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able lawyer, thoroughly conversant with Colonial Government.

1162 question—The Executive Council of late have practically had very little to do with the Government of the Colony?—It ought to have a great deal more to do with it. The insignificance to which it has been reduced I conceive to have been the cause of much mischief in the Colony.

Extracts from Jas's Stuart, Esq., evidence before Canadian Com. House of Assembly.

1163 question—You consider it of utility to have a permanent administration?—I consider it should be placed on the footing of the Privy Council in this country, and consulted by the Governor on all important occasions.

To the following question put by the same Committee in England to Sir Jas. Kempf, he gave the following answer:

134 question—If there was no Executive Council and the Governor were left to govern without any such Council, would it, in your opinion, remove very much of the state of irritable feeling existing between this part of the Legislature and the King's Government in the Colony?—I have not given my attention sufficiently to this question to be able to answer it; but my impression is, that an Executive Council is necessary for the good government of a colony.

The Right Hon. E. G. Stanley, a member of the Imperial Parliament, and lately His Majesty's Principal Secretary of State for the Colonies, who also spent some time in this Province, thus expresses himself respecting the Executive Council, in a letter, addressed to Dr. W.W. Baldwin. (The autograph letter is among the records of your Hon. House.)

"I do, however, think that something might be done with great advantage, to give a really responsible character to the Executive Council, which at present is a perfectly anomalous body, hardly recognized by the Constitution, and effective chiefly as a source of patronage."

Extract from the letter of Hon. E. G. Stanley, to Dr. Baldwin, on Executive Council.

Mr. Stanley also says—

"The remedy is not one of enactment but of practice and the constitutional mode is open to the people of addressing for the removal of the advisers of the Governor and refusing supplies, if necessary, to enforce their wishes."

It will be observed that Mr. Stanley

says "the *remedy* is not one of enactment but of practice," that is, the constitutional act is sufficient in enactments for every thing required; all that is necessary is that the provisions of the constitution should be honestly put in practice.

Sir John Colborne's views of the responsibility of the executive council.

While His Excellency declares that the Executive Council have no responsibilities, and are not recognized by the 31st Geo. 3. chap. 31, Sir John Colborne in a message to your Honorable House, on the 20th Feb'y, 1835, in terms almost directly contradicting the puerile views of his successor, states "the *responsibilities* under which the Executive Council discharge their important and confidential duty, depend upon the *PRINCIPLES of our Constitution* and upon the *law of the land*."

And of Sir P Maitland in answer to address of J. Hurston & others, Newcastle district.

The public documents and records of the Province abound with expressions proceeding from Lieut. Governor Sir Peregrine Maitland, recognizing in the fullest manner the possession, by the people in this province, of the *British Constitution*.

Your Committee beg to give the following as a specimen: In his answer to John Hurston and others, in the Newcastle district, published in the official Gazette of March 2nd, 1826:—

"That I may rely on your steady and cordial support in maintaining that unrivalled *Constitution* of which
"the excellence has been proved by the *experience of ages*,
"and which those who can appreciate it, as you do, will
"ever be found ready to vindicate and defend."

Again in another reply of the same date:

"You set, gentlemen, a just value on your possession of
"a *Constitution the most perfect in the world*, and it is no
"small satisfaction to me to reflect, that, with the vivid recollection which you retain of its blessings in the happy

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"country you have left, your firm and loyal support will never be wanting," &c.

Your Committee would affirm, that the *principles* of our Constitution, as well as the law of the land, alike require their advice to be given "upon the affairs of the province."

Your Committee have appended to their report, (see appendix marked I.) the address passed in the last session of the late parliament (with the yeas and nays) to His Majesty, against the interminable interference from Downing Street, in the management of our local affairs, which should be conducted by the Lieutenant Governor and the Executive Council in harmony with the Provincial Legislature; although the late parliament differed from the present in its views and policy, yet it was unanimous in the adoption of the above remonstrance. These views are corroborated by J. Stephen, Esquire, late counsel to the Colonial Department, and now, it is said, Under Secretary of State for the same. In his examination by the Canada Committee of 1828, he was asked—

"Is it your opinion that upon all those questions, so complicated as they are with regard to the tenure and transmission of property, the colonial legislature, with the advantages of their local knowledge, are much more competent to decide than the British Legislature?"

To which he answered—

"I cannot suppose any man, at all conversant with the subject hesitating respecting the answer to that question—except there be a well founded distrust of the disposition of the colonial legislature to do right, no plausible reason can, I think, be suggested for taking this work out of their hands. They are incomparably better qualified for it than you can be. What should we think of the Canadian Assembly passing acts for the improve-

The address of last session on Downing street interference.

Evidence of J Stephen, Esq. before the Canada committee in 1828.

"ment of the law of real property and conveyancing in this country ! Yet I suppose they understand our system of tenures at least as well as we do theirs."

To be depended on

Now it must be presumed that Mr. Stephen, whose views against the unconstitutional interference of the British Parliament with the appropriate duties of our local Legislature, are so liberal and enlightened, would be equally opposed to any usurpation of the duties of the Executive Council, for assuredly resident gentlemen selected by His Excellency at pleasure for their talents, integrity, and public estimation, are "incomparably better qualified for it," than distant strangers with even the best intentions. It is enough for them in Downing Street to attend to the matters reserved in the 31st Geo. 3d. respecting navigation and commerce.

Evidence of Right
Hon E Ellice before
the same committee

These views of the sufficiency of our own institutions, and the expediency of making them subservient, as they were intended, to the purposes of our local concerns, (with the exception of those special matters expressly reserved by the 31st Geo. 3d, for the paramount authority of the parent state,) are confirmed by the evidence of the Right Honorable Edward Ellice, a member of the British House of Commons. In giving evidence before the committee of 1828, he was asked, "you have said that your application was referred to the consideration of the Executive Council; of whom does the Executive Council consist?" To which question he answered, "the Council consists of the Chief Justice and other persons, *whose duty it is, to advise the Governor with respect to the administration of the country.*" The

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same distinguished person alluding to some difficulties he had experienced, in obtaining some change of tenure in property he holds in Canada, says, "it arose probably from a very general cause of difficulty in that country; a dread on the part of the local authorities to act upon their own responsibility—complaining of defective instructions from home; and this aggravated by perpetual reference backwards and forwards from the government to the Colonial Secretary, in the hope that they might at least agree upon the means of executing the provisions of the law."

This transatlantic system, popularly called *Downing Street law*, to distinguish it from the free and constitutional operation of our local government, is further condemned by the same statesman in the following illustrations collected from his evidence before the same committee.

Alluding to the imposition in Canada by the British Government of customs duties, he says:

"I am aware that the greatest possible objections exist in principle to their doing so, but I am also aware that in point of fact they have got over those objections, and by the Canada Trade Act, have imposed duties to an extent quite equal to the extent of the civil government of both Provinces, without consulting either of the Provincial Legislatures. The Canada Trade act for this purpose, had been passed three years before the arrangement with the Canada company."

Again.

"Certainly the Canadians complain, with apparent reason, of some part of the conduct of government; an English Receiver is appointed, insufficient securities being taken in England, the Assembly suggest the regulation of his office, and subsequently, I understand, bills were sent up in the terms of a bill passed in other Colonies for this purpose; they are told this is an encroachment on the prerogative of

"Downing street Law."

Imposition of duties by the Canada Trade Act.

Public defaulters.

the Crown, and their bills are rejected. The Receiver had previously failed in debt to the public about £100,000, and when they say "as you made the appointment yourselves, took your securities in England, and rejected our advice, it is fair you should pay the defalcation," Government insisted upon their laying fresh taxes on their constituents for it.— In the same manner they allege they have sent up bills for the regulation of the office of Sheriff, that these also were rejected, and two following Sheriff's have failed; the one a defaulter of Sutors' money to the extent of £27,000; and another for a less amount. These are not theoretical, they are practical evils, and form just grounds of complaint."

Again.

From 1822 to 1828 the measures of the Government said to be illegal & offensive to the people.

"The Governor was instructed to supply the want of an appropriation bill by his own warrants on the Receivers, to whom the Taxes are paid under the provisions of the "Canada Trade act" but it would be difficult to find out by what law such instructions are sanctioned. This has been the course of proceeding from 1822 to 1828, and it is much to be deplored that government should have persevered so long in measures, which however much they may plead the excuse of pressing emergency in the first instance, were illegal, and offensive to the rights and feelings of the people. If no remedy was obtainable in Canada, an appeal should have been sooner made to Parliament, and that more should not have been allowed to fester till the English and the French population have been almost brought into collision, and a wider separation between them in opinion on all matters of internal government and legislation had been rather encouraged than checked. Assembly after Assembly have been called together, in which the local authorities have wisely persevered in attempts to carry their measures by a minority at no time exceeding ten, and seldom half that number, in a body of fifty representatives. And the committee must always recollect the continuance of these dissensions has inflamed trivial differences on immaterial points at first into serious additional causes of difference and misunderstanding, which it is not easy now to foresee the means of allaying or removing."

When dissensions are once raised it is not always possible to foresee the means of allaying them.

"I wish to add, that in any thing that may have fallen from me in the course of these examinations, I have not had the least intention of imputing blame to any persons connected with the Executive Government in either Province. I believe they have acted under instructions from this country, and that the difficulties they have had to contend with, and the discussions in which they have been involved with the Colonial Legislatures, were the inevitable consequences of a determination to persevere in the system of government I have described to the committee, & which could scarcely have been avoided while that system remain-

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ed unreformed and unimproved." And to the following question, "Do you conceive it would be possible to form a representation upon the principle of admitting some of the great towns as independent bodies into a confederation, such as exists in the north of Germany?" To which he answered, "I am afraid it is too late to attempt the introduction of new principles of that kind in America. You must either improve the *system* that exists on the model of our *institutions* at home, or copy from the simpler forms in practice in the United States. No other method will be congenial to the habits of the English or American *inhabitants* of Canada."

The political condition of Lower Canada, as above depicted by the Right Honorable Edward Ellice, is too applicable to our own country :

"It is with grief," as a resolution of your Honorable House has expressed it, "the country has seen the improvident contract under which the Huron Tract of a million of acres of choice lands has been assumed to be given, at an almost nominal value, to a Company in London, while the annual instalments paid by them are expended by the Provincial Executive, without the consent of Parliament, and the large amount realized by the Company from sales at a very advanced price, are withdrawn from the Colony and transmitted to England. This improvident transaction, unsanctioned by any domestic enactment, ought to be held invalid, particularly as it was a transaction based in no degree upon the good of the Colony, whose lands are thus wastefully assigned. The Charter and all the Statutes connected with it are a violation of the 18th Geo. 3rd, and our Constitutional Act."

The law passed by the British Government for the sale of our Clergy Reserves is a further illustration of the system of Government over us by a Lieutenant Governor in *unchecked* connexion with Downing Street. Under this law, enacted by the British Parliament without our knowledge or consent, more than £60,000 have been raised by the sale of the Clergy Reserves, abstracted from the country, and paid into the military chest, instead of being applied to the purposes of education and internal improvement. In a

Institutions of the old country must be preserved, or those of a simpler form in use in the U. S. No other so congenial to the inhabitants.

Grant of the Huron Tract to the Canada company condemn'd as unreasonable and unjust.

Clergy Reserves.

subsequent part of the Report this subject will be again adverted to, but at present your committee simply mention the fact, and also, that within a short period, 57 Rectories have been erected and endowed. The British Act, it is presumed, inserted the condition "by and with the advice and consent of the Executive Council," as a security to the country against any abuse of the power it gave; but such a precaution is of no practical avail with an insufficient Executive Council, and it is plain, that the above mentioned outrage upon the whole community could not have occurred, had we enjoyed what is sought for and denied, (a well constituted Executive Council possessing the confidence of the country.)

Executive authority
almost always in
need of advice.

Now it has been simply proposed, adopting Mr. Ellice's views, to improve our systems here, on the model of the institutions in England, by proposing that the Executive Council shall advise the Lieut. Governor on our affairs as freely as His Majesty's Council advises the King; but the industrious classes are told by His Excellency that "the wish, if gratified, would be ruinous," and that the 31st Geo. 3rd, "has ordained no such ABSURDITIES."

In giving an aggregate account of the opinion entertained upon the Constitutional duties of the Executive Council, by the most thinking men of all political parties; your committee, although desirous of abridging their report as much as possible, will not omit to notice a document from Lower Canada, which is headed a "Declaration of the causes which led to

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"ciation of Quebec, and of the objects for which it has been formed,"—in which we meet with the following pertinent remarks :

"In every well regulated government it is essential that the Executive authority should be aided by the advice of able well and informed individuals, acting together and in a body, by which sound discretion, uniformity, consistency, and system are imparted to its measures. Among Colonial governments, which are generally administered by persons laboring under the disadvantages of a deficiency of local information, assistance of this nature is *indispensable* for the attainment of the ends of GOOD GOVERNMENT. *This body of advisers ought to be found in the Executive Council of the Province*, but its members are too few in number, and its composition too defective to answer the purposes of its institution."

Under the foregoing view it will be observed that the Association contemplate by constitutional means "to obtain such a position of the Executive Council, as may impart to it the efficiency and weight which it ought to possess."

The above Quebec "Association" is not composed of the Reformers in Lower Canada, with whom Mr. Speaker Papineau's name is usually connected ; (altho' the Reformers there entertain the same views, but of gentlemen of wealth and influence, known by the name of constitutionalists or conservators, directly opposed to that party. It is therefore the testimony of persons avowedly determined to sustain the constitution against any of the modifications held by the other party to be necessary and expedient. Your committee would here subjoin the following all important and liberal views of policy, expressed by the Canada Committee of the House of Commons in the year 1823, arising from a thorough understanding of

the state and wants of these colonies, set forth in the voluminous and unquestionable testimony of persons best conversant with the subjects of the committee's inquiry:

All minor grievances may be easily redressed.

"Your committee lament that the late period of the session in which they were appointed has rendered a minute investigation into all parts of the subject submitted to their inquiry impossible. They believe, too, that if the Legislative Assemblies, & the *Executive Government* of Canada, be put on a *right footing*, that means will be found within the Province of remedying all minor grievances. They are disposed nevertheless to recommend that the prayer of the Lower Canadians for permission to appoint an agent in the same manner as agents are appointed by other Colonies which possess local Legislatures, should be granted, and that a similar privilege should be extended to Upper Canada, if that colony should desire it."

Attention of committee directed to two branches of inquiry.

"At an early period of their investigation, your committee perceived that their attention must be directed to two distinct branches of inquiry: 1st. To what degree the embarrassments and discontents which have long prevailed in the Canadas, have arisen from defects in the *system of laws* and the *Constitutions established in these Colonies*.—2dly. How far those evils were to be attributed to the *manner* in which the *existing system* has been administered."

Constitutional system of Government desired in these loyal and important colonies.

"Your committee have clearly expressed their opinion that serious defects were to be found in that *system*, & have ventured to suggest several alterations that have appeared to them to be necessary or convenient. They also fully admit that from these, as well as from other circumstances, the task of government in these Colonies, (and especially in the Lower Province) has not been an easy one; but they feel it a duty to express their opinion that it is to the *second* of the *causes* alluded to these *embarrassments* and *discontents* are in a *great measure* to be traced. They are most anxious to record their complete conviction that neither the suggestions they have presumed to make, nor any other improvements in the laws and constitutions of the Canadas will be attended with the desired effect, unless an *impartial, conciliatory, and constitutional system of Government* be observed in these loyal and important Colonies."

The remedy here proposed as an antidote to the evils existing in the government of the Canadas, emanates from a spirit breathing forth the purest patriotism

the result of a thorough understanding of all the bearings of the subject matter of inquiry, and is, at once, an appeal to the best feelings of our nature. Had there existed any defects in the system of our laws & constitution, the Committee would at once have recommended an amendment or revision of them; but aware that nothing was wanting but an open, ingenuous and equitable administration of those statutes, they are brought to the only plain and obvious conclusion that could be attained.

All Colonial Ministers since the date of that report have professed an intention to be guided by its recommendations; the famous despatch of Lord Goderich of 8th Nov. 1832, is professedly based upon it, and *His present Excellency has it pointed out to him as one of his text books.*

Lord Goderich's
Despatch of 8th Nov
1832 considered as a
general text book.

It is to your committee passing strange, that notwithstanding the above Report is held forth to us, sanctioned by such authority, a temerity of conduct, bordering on recklessness of consequences, should be allowed by its noble possessor, to give cause for suspicion and distrust towards the intentions of His Majesty's Government. Had his Excellency, instead of the course he has been pleased to pursue, been implicitly guided by the recommendations contained in the above extract, he had then established confidence and an assurance of equitable administration; but when, instead of which, he has taunted the Province upon its infant condition, and appears in the illustrations he has given to have had in his mind's eye the fable of

the young frog and the ox—what assurance have we, that governed in the “manner” we are, we shall ever arise from our present degraded condition.

And your committee are led to the conclusion from a careful observation of things, that the policy apparently intended to be pursued by the present head of our Government and that of Rehoboam, as recorded in the 12th chapter of the first book of Kings to be very similar.

The Executive Council, therefore, are established by law under constitutional responsibilities to advise “upon the affairs of the province,” and to be assisting to the Lieutenant Governor “in all affairs relating to the King’s service;” and in favor of this proposition we have in whole or in part the concurrent testimony, against His Excellency, of the above overwhelming authorities, viz :

Authorities.

- 1st. The Constitutional Act.
- 2ad. Various British and Provincial Statutes, referring to and recognizing the Executive Council of the Province “appointed for the affairs of the Province.”
- 3rd. Governor Simcoe and succeeding Governors.
- 4th. The Royal Instructions.
- 5th. The Privy Councillors’ Oath.
- 6th. The general resemblance between his Majesty’s Privy Council and the Executive Council of this Province.
- 7th. The nature and genius of our Government and the general principles of the Constitution.
- 8th. The House of Assembly.
- 9th. James Stuart, Esquire.
- 10th. Sir James Kempt.
- 11th. The Right Hon. Lord Stanley.
- 12th. His Excellency Sir P. Maitland.
- 13th. His Excellency Sir J. Colborne.
- 14th. The late Executive Councillors.
- 15th. The Report of the Canada Committee of 1828.
- 16th. The Right Honorable Edward Ellice.
- 17th. T. Stephen, Esq. late Counsel to the Colonial Office.

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- 18th. The Quebec Association.
 19th. The absence of any express provision of law or authority forbidding it.
 20th. The universal admission of all classes, parties, creeds and orders from 1793, until the arrival amongst us of Sir F. B. Head.
 21st. Lieutenant Governor Hunter.
 22nd. The debates in the British Parliament on the passage of 31st of the King.

In reference to the objection of His Excellency that "it must be evident to every *well constituted mind*, that in an infant state of society, it would be impossible *practically* to secure a sufficient number of impartial persons to effect a change of Ministry as often as it might be necessary for the interests of the people to do so," (by the above it will be observed that His Excellency, as in many other instances, has abandoned the constitutional object, and is endeavouring to sustain his positions on the principle of expediency.) Your committee would state that on general principles the interests of the people could only require the removal of a Council when there were other and better persons ready to fill their places, and until such other and better persons could be found, it is evident neither the people nor their interests would require or look for a change.

The moral and intellectual resources of this country are suited to its wants, and notwithstanding His Excellency's sneers would loose nothing by a comparison with any other country, and in the opinion of your committee it would be even easier to form Councils from among the inhabitants of this Province adequate to its exigencies, than in England itself for the

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affairs of the empire. A really great man in this country would soon find the means to organize our institutions for the practical purposes of good government and peace of society.

Liability to im-
peachment denied.

Your committee deny the pretended all-sufficiency of the Governor's liability to impeachment for mismanagement of our affairs, for the following reasons :

1st. Because although such impeachment might be a punishment for mal-administration after it was done, yet it affords no daily check or ground against it by means of advice or caution, and it seems to your committee that the impeachment should at most be only resorted to after a Governor had acted wrong with every local means afforded him to do what was right.

2nd. Because the impeachment or complaint must be made by the injured person at a great distance, requiring a delay, expense and watchfulness; out of the reach of the power or means of the sufferer, who (if belonging to the industrious classes) might make out in writing a very informal or insufficient case, however clear his merits, or be unable to retain Counsel and Agents here and in England to conduct his suit. Limitation to such a remedy would practically be a denial of justice.

3rd. Because the complaint would be made to a Minister in Downing Street, who is the patron of the Governor accused, and besides the Governor has numerous friends on the spot to exercise every influence and interest in his behalf.

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The weight of this reason is increased by the difficulty of proving any act to have been done from corrupt motives. Even if a presumptive case could be made out against a Governor, it would be contended that a clear and positive one must be established before the consequences of impeachment could be visited on the accused; and how very many Acts of misgovernment their are, in their nature vexatious and injurious, against which it would be difficult to fix the charge of corrupt motive, while it was palliated, evaded or explained away as an error of Judgment, the deceptive assurances of others, a misapprehension of circumstances, a mistaken policy or the like. For instance, it would be in vain to proceed against the Executive authorities for the erection (as hereinafter mentioned, of 57 rectories, and certain corrupt exchanges of lands, although opposed to the well known sentiments and interest of a vast majority of the Religious community. It would be equally vain to attempt to institute such proceedings for many appointments to office, as Surveyor General, Colonels of Militia, the Commissioners of the Courts of Requests, and other offices. It would therefore obviously place the country in a desperate condition if the *only means of PREVENTING wrong being done* was founded on an institution of an impeachment for it, *after it was done*, before a patron of the wrong doer 4000 miles off, defended by a person intrenched in power here and sustained at home by family connexions, and the preservation of what is called the colonial *system*. The House of Assembly

Reasons why the
remedy by impeach-
ment is not desirable.

of Lower Canada instituted a complaint of this nature against Lord Aylmer, in a most solemn manner and with great unanimity, for most arbitrary and unconstitutional misgovernment, but it only ended in his promotion to a higher post of honor,—altho' therefore an impeachment might be resorted to in extreme cases, yet it by no means supercedes the necessity of all local and constitutional checks, calculated to prevent a case for so difficult, painful and undesirable a course. This precaution against the occurrence of evil instead of merely contriving how it can be punished by impeachment 4000 miles off, is the more needed from the fact that this impeachment would yield no redress to the persons injured, even if it punished the person injuring them. If all our local Governors were impeached, and all their estates confiscated, it would not repair the injuries of the most notorious nature, besides thousands of just complaints murmured only in secret, and either endured with patience, because the remedy proposed would be worse than the injury, or because, what is notoriously true, to prefer a complaint, however just, against a Governor insures a black mark against his name, as a troublesome, a factious, or undeserving man, whose future hopes are blasted, and his oppressions multiplied at every favourable opportunity, in various ways, that elude all proof and conviction. What could be done to redeem the injustice against Gourlay, Willis, the late Robert Randal, Francis Collins, and others! And if an unsufficient, blustering pretender to learning should be made a Judge,

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and an innocent person be thereby convicted and executed, he could not by impeachment be restored to life.

Your committee therefore desire again to reiterate their conviction that this alleged liability to impeachment for misgovernment, was never intended, and ought not, to supply the place of an efficient state of these institutions, wisely provided by Law, not to punish, but to prevent wrong; a course as desirable for the Parent State as for the Colony; and although His Excellency has been pleased to state to the citizens in answer to their Address, his unwillingness to be deprived of "the only consolation which supports any honest man in an arduous duty, viz:—the reflection that he is ready to atone for every error he commits, and that he is subject to arraignment if he offends;" yet this consideration either as a motive or a remedy, is so false in morals and so puerile in political affairs, as not to need further commentary. No better guard against both corrupt and unintentional misgovernment can be devised with our present Constitution than an efficient Executive Council, composed of persons of established character, to advise the Lieutenant Governor in public affairs.

4th. Because there are such change of Colonial Ministers, that there might be half a dozen in succession before a suit could be conducted to a conclusion—and the justice done by one Minister is often undone by another. For instance, in Lower Canada, Mr. Gale, who gave such evidence before the Canada Committee of 1828, as to oblige the Right Honor-

Liability to impeachment was never intended to supply the place of institutions provided by law.

No better guard against misgovernment than efficient Executive Council.

able Mr. Spring Rice, to pronounce him unfit for any office of trust, was appointed a Judge by Governor General Aylmer, whose active partizan he had been.

Mr. Gale's appointment to the Bench of Lower Canada not confirmed by Mr. Rice but by Lord Aberdeen.

When the news of this appointment reached England in the Autumn of 1834, Mr. Rice had become Colonial Secretary, who addressed a despatch to Lord Aylmer, saying he could not confirm Mr. Gale's appointment. Mr. Rice was soon succeeded by Lord Aberdeen, and therefore Lord Aylmer disregarding the commands of Ex-Minister Rice, and the known sentiments of the people and their representatives, procured from the successor of Mr. Rice, a confirmation of Mr. Gale's appointment, who is still on the Lower Canada Bench, although Mr. Spring Rice, on the 9th March, 1835, being again in power, in a speech in the House of Commons, reiterated the denunciation of Mr. Gale as an improper person to occupy that station.

Your Committee find the same doing by one Minister and undoing by another in the affairs of our own Province, which is unhappily misgoverned by the same policy, under the same Constitutional Act—For instance, the late Attorney and Solicitor Generals were dismissed from office according to Lord Goderich's Despatch, because they opposed the avowed policy of His Majesty's Government, in making certain concessions to the wants and wishes of the people, nor did His Lordship seem at all to notice the personal indignity they had audaciously offered to himself even as a Minister of the Crown—but no sooner was Lord Goderich succeeded by Lord Stanley, than the decision of the former,

Crown officers dismissed and restored to office.

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in favor of the rights and liberties of the people, was by the latter cancelled, and the Solicitor General put back again into office, to the great dissatisfaction of the country, and the Attorney General sent as Chief Justice to Newfoundland to create new scenes of trouble and dissension there.

5th. Because, when in the year 1831, His Majesty suggested a further provision for the Civil List, which the Colonial Minister, required to be made, *for seven years, or for the life of the King*, the terms of the proposition were not candidly submitted to the House of Assembly, but were suppressed, for the purpose of securing a *keen bargain* and for his boasted adroitness in managing it, His late Excellency was officially commended. This undue and impolitic concealment so unworthy a great and magnanimous Government, was practised with the aid of the executive influence to carry a measure injurious to the constitutional liberties of the people; but the usefulness of any complaint against a Government for such unworthy policy is apparent, when we see, as in this case, that such liberal instructions are violated, and the mischief accomplished with impunity, although it merits disgrace.

Your committee cannot therefore regard as satisfactory our mere nominal right to appeals to Downing Street, where the justest decisions in favor of our rights by one Minister, are with seeming indifference and impunity reversed by another.

6th. Because the pretended responsibility to Downing Street has been in full operation for nearly half a century, and

we have therefore against its sufficiency the uniform testimony afforded by our misgovernment during nearly the whole of that period. By this system we have been stript of the public lands and resources, and reduced to our present condition—and having thus suffered in the past, we cannot look for better in the future, if we submit to a continuance of the same system as has brought such a visitation upon us.

7th. Because altho' his Excellency professes to be responsible to Downing Street for the Executive Council as well as for himself, yet it is, according to His Excellency, "unreasonable that one man should have "to bear another person's blame."

Responsibility of
the Lieut. Governor
discussed.

The professed responsibility of His Excellency for the acts of the Council, in case of default on their part is novel indeed. Your Committee can understand well enough how the adviser becomes responsible for the acts of the advised, but how the actor can become responsible for the advice on which the Act was founded is beyond their comprehension.

A comparison of our Constitution with that of the Parent State, justifies the language used by Simcoe respecting it. In England they have a King.—In Canada we have his representative.—In England they have a House of Lords, created by the King.—In Canada we have as a substitute a Legislative Council created by the King.—In England they have a House of Commons elected by the people; in Canada we have a House of Assembly elected by the people.—In England the King has a Privy Council to advise him up-

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on the affairs of the empire. In Canada he
 has an Executive Council to advise him
 and his representative upon the affairs of
 the Province.

This is emphatically the "very image
 and transcript of the British Constitution."
 But it becomes a mutilated constitution,
 and a sorry one indeed, when Sir Francis
 Head obliterates the Executive Council, or
 makes it in his own language "mute,"
 "defenceless," "irresponsible," sworn to
 be "dumb."—That the King, Lords, and
 Commons, and the Cabinet Council per-
 form certain acts in England, that are not
 authorised to be done by the Lieutenant
 Governor, Legislative Council and House
 of Assembly, and the Executive Council
 of the Province, your committee do not
 deny—for instance, the Parliament of
 Great Britain legislate for the empire and
 for the regulation of trade and commerce,
 &c. with other nations, and the Cabinet
 Council advise the King relating to the
 negotiations going on abroad as well as
 for the welfare of the local affairs of the
 kingdom, and the appointment of certain
 high and important offices, while in Cana-
 da the legislative duties of the parliament
 are more of a local nature, and so with the
 matters to be advised, and consulted by
 the Executive Council, it must be clear,
 that it no more follows, because the Exe-
 cutive Council are not to be advised on
 precisely the same matters that pass under
 the revision of the Cabinet Council,
 that they are not to advise at all, than it
 follows, that the legislature here are not to
 legislate on any matter because they are
 not allowed to legislate on all, or precise-

ly the same matters that are considered in the British Parliament.

It will be observed that His Excellency allows, that "if the Lieutenant Governor stood in the place of the Sovereign," an Executive Council or some such body would be "evidently necessary and should be appointed," with whom he should advise;—he further states that, "this is not the case," but that "the Lieutenant Governor is, therefore, the responsible minister of the colony;" if as His Excellency says, he is the responsible minister of the colony, "it must be evident to every well constituted mind" (on the principle of a responsible ministry in England) that he ought, ere this, to have retired from his office, for nothing is more clear, than that he does not possess the confidence of the people's representatives.

The responsible minister in England, would be disgraced by attempting to continue in office, for one single day, after losing the confidence of the House of Commons, so if he be merely a minister, he does not do as other ministers do; but it is beyond contradiction that he is something more than a minister. Who ever heard of a minister in England doing and performing the acts that the Lieutenant Governor is authorised to do and perform here? both by the 31st of the King and the Royal Instructions. By reference to the instructions it will be observed that the government of the province is spoken of as the government under the Lieutenant Governor no less than five times: in section 9, the words "*in your Government*," are used; in sec. 45 the words "*through-*

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out your government" are used; in section 62, speaking of both provinces, the words "*their respective governments*," are used; section 63 is as follows: "and you are up-
 "on all occasions to send to us by one of
 "our principal Secretaries of State, a par-
 "ticular account of all your proceedings
 "and of the condition of affairs *within your*
 "*government.*"

The above most surely supposes discre-
 tionary power in the administration of the
 affairs of the Province, for if nothing was
 to be done but what was contained in in-
 structions sent out from home, there would
 be no use of transmitting a particular ac-
 count of proceedings, as they would know
 for months before they could be performed;
 but the 59th section is quite conclusive on
 the point, and goes clearly to shew that
 the Lieutenant Governor is something
 more than a mere minister, and which
 clause ought in common fairness to have
 been quoted by His Excellency with those
 he did quote in answer to the Council; by
 it then His Excellency, *with the advice of*
the Executive Council, may take, order, do &
 perform all such matters and things as are
 for the peace, welfare and prosperity of
 the country; in short, may even DECLARE
 and commence WAR, it is as follows: "if
 any thing shall happen which may be of
 advantage or security to *our Province UN-*
DER YOUR GOVERNMENT, which is not here
 contained (or by your commission provi-
 ded for,) We do hereby *allow* unto you,
 with the ADVICE and CONSENT of our
 said *Executive Council*, to take order for the
 present therein."

Discretionary pow
 or of this Lt. Gov'r.

Powers of the Lt
 Governor.

It will be observed that no minister is

even authorised to do what His Excellency can do. He calls together the Parliament and opens and closes it, with a most gracious speech from the throne ;—he prorogues or dissolves Parliament ;—he gives the royal assent to bills, by which they become laws ;—he appoints to and dismisses from various offices—no petition or remonstrance is received and acted upon by the King, (not even from the House of Assembly) except transmitted through him ; he may even declare and commence War.

Your Committee will not believe that any one, possessing a “a well constituted mind” will deny that he stands in need of the best advice possible to be obtained, to enable him “impartially” to perform all those duties, & which the Constitution has wisely provided.

Executive council
a remedy against
Grievances.

It was recommended, as a remedy for prevailing and increasing grievances, that the Executive Council should be allowed to advise the Lieutenant Governor upon public affairs before he acted on them ; and this might be hoped to be a remedy, because if good advice were given, it would (it must be presumed) be adopted ; and if bad advice were given, it would be rejected or corrected. This doctrine is pronounced by His Excellency to be so unconstitutional, vicious and theoretical, as to prevent his retaining the late Council in his confidence, unless they retired from such principles. Your Committee in giving a frank and free report upon this important question are obliged to express their belief, that His Excellency was not so much shocked at the doctrine as he was averse to its practical bearing against his own arbitrary pleasure, and they have

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come to that conclusion for the following reasons :—

1. Because His Excellency compares his late Council to "a sterling fund upon which he can constitutionally draw whenever embarrassment requires it."

In what cases Executive council to be consulted or not.

The objection, therefore, is not made so much against having Councillors, as against taking their Counsel till *driven by embarrassment to do so*; of which embarrassment he claims to be the sole judge, although it does seem to Your Committee inexpedient and unreasonable, that His Excellency should pursue his own unadvised pleasure in every thing in government that is gracious, acceptable and popular, and only bring His Executive Council into the field whenever the pursuit of such unadvised pleasure has produced embarrassment, odium or difficulty.

2nd. Because the Lieutenant Governor admits that "to enable him to perform the arduous duties of his office the constitution has wisely provided him with an Executive Council, competent to supply him with that local knowledge in which he may be deficient, and to whom he may apply for council or advice." Thus he admits the wisdom of the institution, and the purposes for which it was provided; but he avowedly wishes to make an experiment (at the expense of the country) of the extent to which he can carry on his government, without their aid.

3rd. Because he admits "the advantage of such a Council to a Lieutenant Governor is so self-evident, that he must be weak and self-sufficient, indeed, who does not continually have recourse to it."

Opinion of Lieut. Governor on the subject.

Thus the advantage is fully admitted, but his obvious repugnance is against availing himself of that advantage oftener than he may please, and with his late Council for the three weeks they were in office he did not please to do it at all. He admits the advantage of such help, but he repels the proposition to receive it before "embarrassment requires it," when it might be too late to remedy the evil.

4th. Because he admits that the Executive Council strengthens his judgment.— But he betrays repugnance against the proposition to strengthen his judgment when he happens to think it strong enough without it or to confer dignity on his proceedings when he thinks them dignified enough without it. But he wishes the strength or dignity to be reserved until "embarrassment requires it."

5th. Because he states that the Executive Council should constitutionally "serve him (the Lieutenant Governor) not them (the people.)"

But the repugnance betrayed is against being served by them in the public affairs until he thinks "embarrassment requires it."

6th. Because he had promised his late Council "to treat them with implicit confidence."

But his repugnance is against it being so implicit as to be received upon public affairs, before "embarrassment requires it."

7th. Because His Excellency mentions the willing approval by the late Council of the very first suggestion he made to them, namely: "that no important business

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"should be commenced in Council until they, as well as the Lieutenant Governor, had become mutually acquainted with their respective duties." Thus important business, it is admitted, was to be commenced, but the complaint is that it was commenced too soon, viz: before "embarrassment requires it."

8th. Because in his answer to the citizens he says respecting the Executive Council, "I shall consult them as unreservedly as I had promised to consult those who have just resigned."

Thus it appears he had promised to consult them *unreservedly*; but he claims the *reservation* to consult them only at his pleasure, viz. when "embarrassment requires it."

9th. Because His Excellency asks the citizens "why then should my Council, whose valuable advice (if it were not forced upon me) I should be most anxious to receive, be required to demand of me my responsibility?" Thus it appears that the objection is not against a Council, but against their advice, being "forced upon him" when he thinks he needs it not, viz:—before "embarrassment requires it."

From all which your committee are obliged to report their belief that His Excellency was not so much shocked at the doctrine of the late Council as he was averse to its practical bearing against his own unadvised arbitrary pleasure to draw upon their sterling fund only when "embarrassment requires it."

His Excellency in his reply objects to the views of the late Council, because "it

The opposition of the Lt. Governor to the doctrine of the council arose from its practical bearing on his arbitrary pleasure.

The Lt. Governor's objections to the views of the council not warranted by the statements furnished to the house by the council.

" would be evidently unjust towards him
" that he should be liable to impeachment
" for any acts but his own." But in the representation of the late Council, furnished your Honorable House by His Excellency, there is nothing which places things on such a foundation. They merely proposed to give advice upon public affairs preparatory to His Excellency's discretionary action upon those affairs. The acts of His Excellency would not be the less his own, because he received good advice before acting; nor would he under such advice, be less liable to impeachment, while he certainly would be less likely to deserve or incur it.

The Lt. Governor misquotes the city corporation address.

Your committee regret to notice in His Excellency's answer to the City Corporation, that he charges them with begging leave to name for him other individuals for the station, (the Executive Council) because when so exalted a public functionary as the Representative of His Most Gracious Majesty is betrayed into misquotations or misrepresentations, manifestly not justified by the document from which they are professed to be taken with candor and truth, it is calculated to impair the weight and dignity of the high station and induce by its pernicious example a laxity, on such subjects, in the public morals.

For it is plain the City Council in their address (in the appendix marked D) name no individuals, but leave His Excellency in the free exercise of the Royal Prerogative to select any suitable Councillors from the Province at large.

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In the same public document His Excellency further remarks—

"The members of the late Council rest their claims very nearly on the following grounds: that the responsibility they assume being a popular opinion daily increasing, is consequently the law of the land; and secondly, that though the powers they require are no where expressed in the Constitutional Act, they were evidently intended to have been inserted."

Extract from the answer to the above address.

Your committee are obliged to report—that the above extract given as the grounds assumed by the late Council in their representation is neither candid nor warranted by facts.

The late Council plainly deduce their duties from the 31st Geo. 3d, even without reference to the less desirable but not less forcible principles of constitutional right and civil liberty. How then can they be truly said to make the law of the land the consequence of popular opinion? or that their powers were only intended to be inserted in the statute, when they quote the the statute in which the powers are actually inserted.

The council deduce their duties from 31 Geo. 3d.

In the answer to the citizens of Toronto, His Excellency says—"with respect to my late Council, I regret, quite as much as you can do, their resignation; but, before they took the oath of secrecy (which appears to my judgment to be an oath of non-responsibility to the people) I addressed to them a note which clearly forewarned them, as follows:—*"I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it."*

Extract from answer to citizens of Toronto.

Your Committee here notice,—1st, an alleged regret—2nd, an alleged arrangement.

Notice of above extract.

It seems impossible to reconcile this alleged regret on the part of His Excellency at their resignation, with his own act obliging them to resign.

The late Council were called upon "to retire from his confidence" if they did not "retire from their principles"—but they *could not retire from their principles*, and were therefore obliged *to retire from his confidence*.

This expressed feeling of regret of the Lt. Governor on the resignation of the late council very questionable.

To present to the late Council a dishonorable condition upon which to remain in the King's service, and then allege regret, at their declining that condition by tendering their resignation, obliges your committee to report their belief either that His Excellency really felt no such regret as is alleged, or that he did not feel the repugnance honorably expressed by Mr. Baldwin, to the abandonment of principles for the sake of place.

The alleged arrangement shows a want of candour in his Excellency.

2nd. There is an alleged arrangement—Now Your Committee cannot but notice a want of candor in this matter. The terms "on all subjects respecting which I may feel it advisable to require it" (advice) are obviously indefinite, and could not, Your Committee think have been anticipated by any to mean "*no advice at all*."

If His Excellency intended the above as a mental reservation enabling him to convert His Council into cyphers or mutes, he should not have coupled with it expressions implying the reverse; for in the letter from which this alleged arrangement is deduced, His Excellency assures them of His "implicit confidence."

The Lt. Governor is not correct in saying that the arrangement was disputed by the council, but that it was broken by himself.

But it appears to Your Committee that the circumstance of adding three new Councillors with the assurance to them of his "implicit confidence," amounted to an arrangement, a declaration of an intention to advise with them freely, "implicit con-

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fidence" cannot be manifested by placing none; and when His Excellency's letter to Mr. Baldwin was publicly read by a member in both Houses of Parliament, no one construed it to mean an arrangement not to consult the Council at all; instead therefore of admitting that the late Council, as alleged by His Excellency, "altogether in a body disputed the arrangement," Your Committee consider that they had rather cause to complain that the arrangement was broken by him: for the detention of them three weeks unconsulted in the Council in the most urgent season of business was a palpable violation of the promise to repose "implicit confidence."

In his reply to the same address he adds, "I shall consult them (the new Council) as UNREESERVEDLY as I had promised to consult those who have just resigned." This language shews that "he had promised unreservedly to consult his late Council," and such the public universally understood to be the case. But as His Excellency accepted the services of the late Council and "with pleasure" promised to give them his "implicit confidence" and to "consult them unreservedly." Your committee notice with pain the inconsistency of such declarations with the attempt to criminate the late Council by misrepresentation as having first voluntarily entered into an opposite arrangement and then altogether in a body disputed it.

Your Committee addressed a letter on the subject to Mr. Robert Baldwin and Dr. Rolph, both of whom they have also examined. (See Appendix marked T.)

Misrepresentation
tending to criminate
the late council.

The letter received by the council from his Excellency did not agree with the arrangement previously made and it was sent *after* they were sworn, altho' dated the day *before*.

From the letter and evidence Your Committee collect, that no "such arrangement," as is alleged by His Excellency to have been "since disputed," ever was made ("to give advice only when required,") that no such "forewarning" was given them or professed to be given, or expressed or implied, but on the contrary, that the Councillors were told that His Excellency's doors were open for them to give advice on any subject at any time; that the letter now construed by His Excellency into such a limitation, was not the same in words or substance as the one arranged and promised to be given, that *although it is dated the day before the Councillors were sworn in, it was not delivered till afterwards*, when the changed features of the letter appear to have struck with surprise the persons to whom it was addressed, and which letter from motives of delicacy explained in the evidence, was not returned as its disingenuous application was not anticipated.

That the proposition out of which the letter grew *was not made till the negotiation was over*, and the three new Councillors attended by previous desire of His Excellency to receive a formal united invitation, and that *it then originated not with His Excellency but with Mr. Baldwin*.

The statement of his Excellency respecting this letter is worse than his reply about the contingent administration of the Government.

The statement therefore of His Excellency, appears in the same discreditable light as the discrepancy between His denial to Your Honorable House of any agreement between any members of the present Council respecting the contingent administration of the government in case of the Lieutenant Governor's death or ab-

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sence from the Province, and the admission of the facts so denied by two of His present Councillors, Robert Baldwin Sullivan, Esq., and the Honorable Captain Baldwin.

Indeed, it is, if possible, worse, because the mistake is intended to criminate the late Council after their dismissal.

Your Committee feel bound to notice one other of His Excellency's *reasons* by which he attempts to shew that we would be ruined if we had the image and transcript of the British Constitution imparted to us. His Excellency, when replying to the citizens of Toronto, asks with apparent triumph, "supposing it were to be argued that four-fifths of the members of Your House of Assembly ought immediately to be dismissed because in proportion to the population of Great Britain and Ireland there exists five times as many members here as in the English House of Commons, would you not think it very irrational that *this noble but thinly peopled* colony should be made the exact image and transcript of the British Constitution, merely because Colonel Simcoe happened to use these words &c."

Another reason of his Excellency why ruin would ensue if we had the "image" &c. of the British constitution.

Without remarking on the strange idea of His Excellency making the people of a colony into a Constitution, Your Committee beg merely to give an extract from the remarks of Lord Grenville in the House of Lords in the discussion on the passage of the Act 31st Geo. 3. as a reply to the remarks of His Excellency, and the application.

Extract from the speech of Lord Grenville on the passage of the Act 31st Geo. 3rd, contradictory to that of Sir F. Bond Head.

* They did not mean to give Canada exactly the same Constitution, as, for instance, five hundred and fifty-eight representatives. That was impossible in the nature of things; but their great object had been to adhere as nearly as possible to the purity and principles of the English Constitution in every part of the bill; ***** His Lordship (also) said, it was undoubtedly a mistake to suppose that any government was free only as it approached to democratic principles. Absolute monarchy, absolute aristocracy, absolute democracy, had, in the history of mankind, been tried in the scale of experience, and had been found wanting. Our own Constitution, which was compounded of these three, was the first in the world, and the envy of every surrounding nation. It was for that reason that they were now about to communicate the blessings of the English Constitution to the subjects of Canada because they were fully convinced that it was the best in the world. The Legislature of Canada consisted of three parts, representing that of this country."

Sir F Bond Head's view of government.

It is said in the reply that "in government, impartiality is better than knowledge, and it must be evident to every well constituted mind that in an infant state of society it would be impossible practically to secure a sufficient number of impartial persons to effect a change of ministry, as often as it might be necessary for the interests of the people to do so."

Criticism of comment on the above view.

Upon the truth of this maxim "in Government impartiality is better than knowledge," Your committee forbear to offer any extended comment, but they cannot conceal their disgust at the offensive manner in which it is applied against the moral character of the people of this Province. He appears to your committee to have assumed the government with most

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unhappy prejudices against the country; for he alleges certainly with very limited means of personal observation, that there is a lack of "*impartial persons*" to form a new Council on any occasional change; and your committee lament to hear that His Excellency is surrounded by, and gives his credulous ear to irresponsible and unworthy advisers, who poison his mind against the moral and intellectual merits of the people he is appointed to govern.

In his reply to the address of the citizens he expresses his estimate of the knowledge and taste of the public by condescending to "plainer and more homely language," (and both plain and homely enough it is); but besides thus reflecting upon Canadian understandings, His Excellency further impeaches their good morals by declaring there are not "*impartial persons*" enough in the country to enable him to seek adequate changes in the Council. It thus goes to England with the highest official authority that this is little better than a country of *rogues and fools*.—In Canada His Excellency with the temerity of a stranger and the assurance of an old inhabitant, presumes to testify that there is not a sufficient number with heads and hearts yielding knowledge of impartiality to aid the good management of our own local and internal affairs.—Should the history of this Colony be ever collected from the secret despatches in Downing Street (of which we have had frequent specimens) posterity will form a very erroneous and unjust estimate of the talent and virtues in the country—low, in-

On reply to address
of the citizens.

deed are we placed in the scale of human nature.

Reference to Par-
sonage documents.

While engaged in preparing this report the attention of the Committee has been suddenly called to the documents referred to them on the 4th of April respecting the erection and endowment of parsonages throughout the Province and the exchanges of different portions of the Clergy Reserves for other property (which are hereto appended marked P.)

57 rectories consti-
tuted.

From these documents it appears that within the past year fifty-seven rectories or parsonages "according to the establishment of the Church of England" have been constituted in this Province by the government under the great seal of the Province, and have been endowed out of the Clergy Reserves, in each case varying in general from 400 to 800 acres of highly valuable land chiefly in old townships and in some cases within towns.

Subject to the pre-
sentment contained
in 31 Geo. 3.

To these rectories or parsonages ministers have been or are to be presented, as are their successors in future by the government, and they are, according to the thirty-ninth clause of the Constitutional Act "to hold and enjoy the same, and all "rights, profits and emoluments thereun- "to belonging or granted as fully and am- "ply, and in the same manner, and on the "same terms and conditions, and liable to "the performance of the same duties as "the incumbent of a parsonage or recto- "ry in England," and the next clause of the act provides for the exercise of "spi- "ritual and ecclesiastical jurisdiction and "authority" "according to the laws and

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"canons of the Church of England;" under which clause of course, ecclesiastical Courts will be established, as no others can fully exercise such "spiritual and ecclesiastical jurisdiction."

Upon an examination of the instruments by which these rectories or parsonages are constituted, it appears that power is reserved to the government of "hereafter erecting and constituting one or more parsonages or rectories" within the respective townships in which they are now by these instruments constituted.

According to the act, the government may endow these parsonages "from time to time." So that, if the bold experiment succeeds, which is now attempted, we may expect that the present parsonages will receive further endowments, and that the number of these parsonages will be multiplied amongst us, beyond all present calculation.

It may be expected that a great number of Parsonages will be endowed.

It further appears that different clergymen of the Church of England have received from the government in exchange for their own private property, large quantities of the Clergy Reserves; for instance the Rev. James Cogan surrenders 36 acres of land in the township of Hope with a messuage or dwelling house, and receives in exchange 1020 acres, 400 of which are in the township of Hope, 300 in Cavan, 100 in Emily, and 220 in Seymour.

Surrender of land &c. for clergy reserves.

Rev. J. Cogan.

The Rev. Benjamin Cronyn surrenders 4 acres of land with a dwelling house, out-houses, offices, and buildings, and receives in exchange 1892 acres, of which 1396 are situate in the township of London, and the remainder in Nissouri.

Rev. B. Cronyn.

Rev. F. Evans.

The Rev. Francis Evans surrenders 80 acres of a Clergy Reserve and 50 acres in Woodhouse, without any house or building, and he receives 800 acres in Walpole.

Rev Philip Mayerhoffer.

The Rev. Philip Mayerhoffer surrenders the rear part of Lot No. 17 in the fifth Concession of Markham, containing 70 acres, without any house or building, and he receives Lot No. 19 in the same concession of the same township containing 200 acres.

Rear Admiral Van Sittart.

All comment upon such transactions is superfluous. But most astonishing of all Rear Admiral VanSittart has been permitted to share in these good things for the benefit of the church, and has received in exchange for a house, two acres and two lots of land in Blandford and 26 acres, in Oxford East 3690 acres of valuable land!

The land thus conveyed to them in exchange becomes their own property and will not belong to their successors.

These exchanges made to the clergy independent the annual allowance made by the Government.

And all these endowments and all these grants in exchange for messuages and lots of land are in addition to the large regular allowance that is annually paid to them by the Government, out of public monies of the Province without the knowledge or consent of the people and their representatives!

These endowments made in contempt of all remonstrance to the contrary.

Thus in one year, in contempt of all our humble remonstrances and earnest protestations against Church Establishments and Government patronage of Religious bodies fifty-seven *government parsons* have been established in this Province and endowed out of the Clergy Reserves; established and endowed under the Great Seal

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to give it peculiar solemnity, and, if possible, to make it irrevocable.

In this way has the Government opened a new source of political influence and power, and not only established a State Church amongst us, with "spiritual and ecclesiastical jurisdiction and authority," but a State Church, of which the Government is the universal and sole patron, having the exclusive right of making the presentations or appointments of the ministers of these different parsonages.

And are a new source of political influence and power.

It is with difficulty that the committee suppress the strong feelings of disgust, indignation and astonishment which these practices and proceedings of the Government are calculated to excite.

Such proceedings excite disgust, &c.

Year after year have the people of this Province and their Representatives been straining every nerve to procure the appropriation of the Clergy Reserves to some useful public purposes, in which all His Majesty's subjects might impartially and equally participate; year after year, have they solemnly and indignantly protested against the establishment of any State Church in this Province. The people from one end of the Province to the other again and again have petitioned the Provincial Parliament, the King and the Imperial Parliament on the subject.

Efforts have been made from year to year to have an equitable appropriation made of the clergy reserves by petition and otherwise.

These petitions proceeded not only from the people indiscriminately and repeatedly, but also from different public bodies. The explicit and distinct representation on this subject of the Methodist Conference in 1831, in their address to His Majesty cannot be forgotten; inasmuch as it produced

The methodist conference distinct representation on the subject produced the famous reply of Sir J. Colborne.

a most offensive reply from Sir John Colborne, which caused much excitement and dissatisfaction at the time, and inasmuch as the observations contained in the address on the subjects of applying public funds to the support of Religious bodies or teachers, and of appropriating the Clergy Reserves to purposes of general interest were distinguished with wisdom and truth.

18,000 persons express their sentiments.

And so late as 1832 petitions were transmitted to England expressing similar sentiments on these subjects subscribed by more than 18,000 of His Majesty's subjects in this Province. In fact all parties and all denominations on this matter have been agreed, and have so remained with a unanimity and perseverance that is really surprising.

The house of Assembly have been uniform in their exertions.

Equally decided and uniform have been the exertions of your Honorable House to effect the same object, and this has been the case, not only when one party prevailed, but also when its opponent had the ascendancy.—They have repeatedly addressed His Majesty;—they have also repeatedly exercised the powers given to them by the Constitutional Act to repeal those parts of it, which relate to the appropriation of the Clergy Reserves; although these bills like many others ardently desired by the country have been contemptuously rejected in the Legislative Council. So numerous and urgent have been these representations to His Majesty's Government that the appearance, at least of a favorable disposition on this subject, was at length obtained from the Cabinet Minister.

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In 1832, the House of Assembly were informed by His Excellency Sir John Colborne, in a message dated 25th January, 1832, that he had His Majesty's commands to make to it the following communication:—

“The representations which have at different times been made to His Majesty and his Royal Predecessors, of the prejudice sustained by His faithful subjects in this Province from the appropriation of the Clergy Reserves, have engaged His Majesty's most attentive consideration.

Communication from his Majesty's government on the subject of the clergy reserves.

“His Majesty has with no less anxiety considered how far such an appropriation of Territory is conducive either to the temporal welfare of the Ministers of Religion in this Province or to their spiritual influence. Bound no less by his personal feelings than by the sacred obligations of that station to which Providence has called him to watch over the interests of all the Protestant Churches within his dominions; His Majesty could never consent to abandon those interests with a view to any objects of temporary and apparent expediency.

“It has, therefore, been with peculiar satisfaction, that in the result of his inquiries into this subject, His Majesty has found, that the changes sought for by so large a proportion of the inhabitants of this Province may be carried into effect without sacrificing the just claims of the established churches of England and Scotland.—The waste lands which have been set apart as a provision for the Clergy of those venerable bodies have hitherto

yielded no disposable revenue.—The period at which they might reasonably be expected to become more productive, is still remote.

“His Majesty has solid grounds for entertaining the hope that before the arrival of that period, it may be found practicable to afford the Clergy of these churches such a reasonable and moderate provision as may be necessary for enabling them properly to discharge their sacred functions.

“His Majesty, therefore, *invites* the House of Assembly of Upper Canada to consider how the powers given to the Provincial Legislature, by the Constitutional Act, to vary or repeal this part of its provisions, can be called into exercise most advantageously for the spiritual and temporal interests of His Majesty’s faithful subjects in this Province.”

A solemn pledge by his Majesty’s government in respect to the reserves.

Surely, this was a pledge of no ordinary solemnity on the part of the Government, not to proceed in opposition to representations which had, at different times, been made to His Majesty “by so large a proportion of the inhabitants of this Province.”

Which has been violated.

To establish and endow these Rectories in opposition to these representations was as flagrant a violation of good faith as can well be imagined.

Lord Glenelg’s Instructions on the subject.

In Lord Glenelg’s instructions to His Excellency, it is distinctly intimated, that the disposal and appropriation of the Clergy Reserves are to be left, for the present at least, to the Legislature of the Province. Under these circumstances,

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how can the proceedings of the Govern-
ment in the formation and endowment of
these rectories, and the exchange of lands
(evidently a system of jobs) be reconciled
with a decent regard to good faith and jus-
tice to the interests of the province or to the
well-known and often declared wishes of
the people? The reflections which such
a question suggests are painful and mor-
tifying.

Measures, most deeply affecting the
peace and happiness of the people, their
opinions and feelings, are adopted, not on-
ly without their consent, but in opposition
to their known and unanimous wishes.—
To continue our complaints seems equally
wearisome and useless.

Lord Glenelg declares in his instruc-
tions to His Excellency, that "Parlia-
mentary legislation on any subject of ex-
clusively internal concern, in any British
colony, possessing a representative As-
sembly, is, as a general rule, unconsti-
tutional and that to withdraw from the
Canadian to the Imperial Legislature,
the question respecting the Clergy Re-
serves, would be an infringement on that
cardinal principle of colonial govern-
ment which forbids parliamentary inter-
ference, except in submission to an evi-
dent and well established necessity."

Measures adopted
contrary to the opi-
nions and feelings of
the people.

Lord Glenelg's view
of Parliamentary le-
gislation.

These are the professions of the Gov-
ernment, but what has been its conduct?

In 1827, an act was passed by the Im-
perial Parliament without even a pretend-
ed necessity, and without the consent or
knowledge of the people of this Province
or their representatives, authorising the

Professions of Government contrary to their conduct.

sale of the clergy reserves in this Province (not exceeding one-fourth,) and withdrawing from the Canadian to the Imperial Legislature the question respecting the application of these funds to other purposes than their original object, such as the support of education, &c.

The provisions of the British Act of Parliament in 1827 respecting these revenues.

The same act also authorises the Government to accept in exchange for any part of the clergy reserves from any person any lands of equal value.

£61,000 placed in the military chest from sale of clergy reserves.

Under this act *more than sixty-one thousand pounds* abstracted from the small amount in circulation to repay the hard-earnings of the people of this Province have been raised by the sale of land and *paid into the military chest* over and above all the expenses of selling the lands, &c. as appears from the official statement of the Hon. Peter Robinson, the commissioner appointed by the crown for these sales; an evil so great and palpable, that it was foreseen and pointed out by the Right Hon. Edward Ellice in 1828, who in his examination before the committee of the House of Commons on the affairs of Canada; after describing the general and deep feeling which exists in this Province about the appropriation of these reserves, says—“Surely the framers of that act, must have overlooked the additional objection of draining from the small capital of the country any part of it for this invidious purpose.”

Right Hon. Edward Ellice's view of the subject.

Notwithstanding this caution, and although the law was a plain infringement of the principles of our Constitution, recognized and admitted by them, the present *Ministry* are acting upon it not only

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in selling these Reserves, and "draining
"from the small capital of the country for
"this invidious purpose" annually a large
sum, but also in making these exchanges.

Reflections on the
present system.

What a practical commentary is this
upon the professions of a Colonial Secre-
tary! Did the writer of Lord Glenelg's
Instructions suppose that the people of
this Province were destitute of common
sense and discernment?

The whole of the transactions to which
we have adverted respecting the Clergy
Reserves & the erection and endowment
of parsonages, prove the necessity of hav-
ing a responsible Government, and illus-
trate the importance of the great Consti-
tutional principles for which the people
and their representatives, for a long time
and the late Executive Council more re-
cently, have been contending.

Proving the neces-
sity of a responsible
government.

Your committee have deemed it proper
to notice this matter in the report as being
a true commentary on the effect and work-
ing of the system heretofore acted upon,
and now clung to by His Excellency as if
his very existence depended upon it; and
who unblushingly declares that without
that system we are ruined; now your com-
mittee would ask, will any man pretend to
say that the endowing these parsonages
was in accordance with the feelings, wishes
and interests of the people, or will they
pretend to say, that an Executive Coun-
cil possessing the confidence and having
an identity of interest with the great body
of the people, would have advised such a
step—a few seasons more of as favorable
picking, and the remaining clergy reserves,

This affair a true
commentary on the
effect and working of
the general system.

And would not
have existed if the
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itself with the inter-
ests of the people.

in the Province will not be worth the asking, let alone contending for.

The same evils may be expected until the advisers of the King shall possess the confidence of the people and their representatives.

Until the Representative of the King in this Province shall be surrounded by advisers sharing the views and possessing the confidence of the people and their representatives, and shall freely and candidly and cordially consult them upon the affairs of the Province, we must expect the same evils and the same grievances which have only increased from year to year, amidst the complaints of the people, and the promises and professions of the administration. The necessity of insisting upon a constitutional and responsible government must be apparent to every candid man.

House addressed His Ex'y on arrangement of the future government of the Province.

Your Honorable House lately addressed His Excellency on the subject of a supposed understanding or arrangement between two or more of the members of the present Executive Council, as to the administration of the government in the event of His Excellency's death, (which address and answer are hereto appended, marked K.) in which answer His Excellency was pleased to intimate rather indignantly, that he knew of no such agreement, and in fact that no document of such a nature existed.

Who replies that none existed.

Two of the present Councillors assert that such a paper does exist, and was drawn up by His Excellency himself, and signed and delivered in his presence.

The Honorable Robert Baldwin Sullivan, the presiding member of the Executive Council, and the Honorable Captain Baldwin, however informed the committee, as will appear by the minutes of their evidence (marked L. hereto appended) that a paper had been signed whereby Mr. Sullivan had declared his intention in the

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event of His Excellency's death not to administer the government; although by the Royal Instructions in such a case, the administration would devolve upon him, as presiding Councillor, but to resign his office, in order to avoid the administration of the government, *and that this paper was not only in existence but was drawn up by His EXCELLENCY HIMSELF*, in the Council Chamber, signed and delivered to Mr. Allan (the next senior member) in the presence of His Excellency and the whole Council.

The respect which your committee feel for His Excellency's high office, forbids their dwelling upon the mortifying subject of the contradiction between His Excellency's answer and those gentlemen's testimony, and they will only say, that it must of course destroy all confidence in future in His Excellency's assertions, especially as His Excellency retains Mr. Sullivan as his principal and confidential adviser, notwithstanding the evidence so given by him.

Neither do they think it necessary to dwell upon this arrangement, to bargain away, contrary to the royal instructions, the future government of this Province, for such it evidently was, notwithstanding Mr. Sullivan's attempt and natural anxiety to explain it away. An arrangement as unconstitutional & as delusive as could have been proposed; for in the event of Sir Francis B. Head's death, the government would necessarily devolve on the presiding Councillor, and he could not have resigned to any one but His Majesty. To resign to his inferior would have been "a new

Com'te forbear to dwell on this mortifying subject

Such an arrangement inconsistent with the rights and honor of the crown and safety and protection of the people.

theory." Neither could he have released himself from the government by refusing to take the oath of office. The Committee observe that such an oath is not required by the 31st of the King, or the King's Instructions, and at all events the power to administer the government in the event of His Excellency's death, does not depend on it; for if it did, we might be for a time without a government; and if one could decline taking the oath all might, and we might in such an alternative also be left without a government. An arrangement so inconsistent with the rights and honor of the Crown, and with the safety and protection of the people, was probably never before thought of in a British colony; and is a striking evidence of the strange notions entertained by His Excellency and the present Council about our Constitution.

Without a parallel.

In some of the old colonies the people chose their own Governors; but never was a successor to a Governor then living, chosen by the Council; that very Council who in His Excellency's estimation is such a mere cipher; such a mute and irresponsible body.

Com could not obtain evidence from other councillors.

To obtain a fuller elucidation of this humiliating subject, your committee were desirous of obtaining the further evidence of the Honorable Messrs. Allan and Elmsley, and although the Legislative Council in compliance with the address of Your Honorable House granted permission to these honorable gentlemen to attend Your Committee, yet they have refused to do so, under excuse of some informality in addressing them; although in an Execu-

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tive matter, so materially affecting their characters as Councillors, your Committee had hoped all minor considerations would have been discarded. But Mr. Sullivan's statement needs no confirmation, and the participation of the others in this singular and unconstitutional proceeding remains uncontradicted with an opportunity afforded them, if innocent, of exculpation.— This conduct justifies in point of fact the declaration by Your Honorable House of an entire want of confidence in the present Executive Council, communicated by address to His Excellency. It is to Your Committee a matter of profound regret, that when His Excellency was surrounded by the late Council, with every means of conducting his administration in a manner efficient and satisfactory, calculated to allay all existing discontent and preserve the peace, welfare, and good government of the Province, he should so hastily, rashly, and wantonly disappoint public expectation, and fill the Province with greater distress and apprehension than even prevailed from the alien question.

Your Committee while on this humiliating subject feel bound also to remark on the positive contradiction between the evidence of the Honorable Mr. Sullivan and the Honorable Captain Baldwin, as reference thereto will prove, while Mr. Sullivan expressly affirms that the writing was drawn up solely at his own request, Captain Baldwin stated that it was at the suggestion of the Honorable Mr. Elmsley.

The committee beg leave also to remind your Honorable House again of your ad-

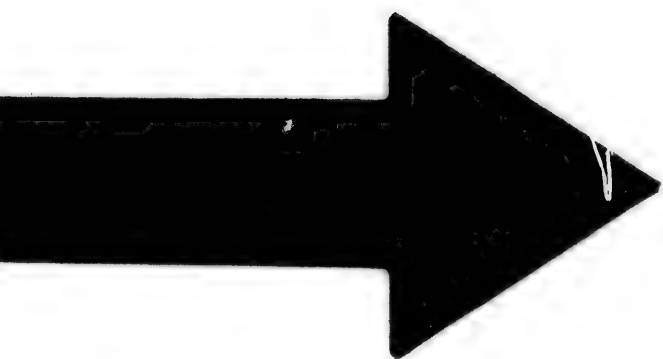
Which indeed is not necessary.

This conduct justifies want of confidence.

And it is surprising that his Excellency under all the favorable circumstances should wantonly disappoint public expectation and fill the province with distress and apprehension.

Committee cannot but remark the contradiction in the evidence of Mr. Sullivan and the Hon. Capt. Baldwin.





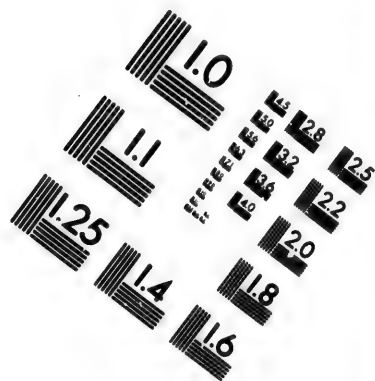
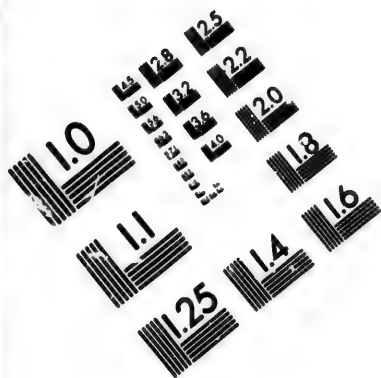
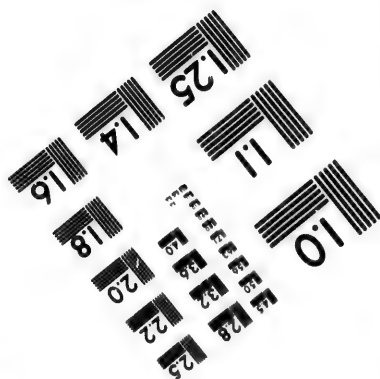
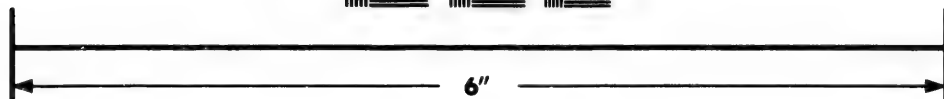
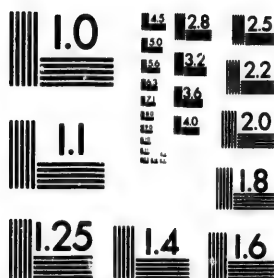


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And beg leave to read the House of address to the King, urging that the principles of the British constitution might be enforced and intimating that without a change the supplies would be withheld.

The House has declared its regret at the removal of the late and want of confidence in the present council.

Withholding supply constitutional according to Lord Glenelg's despatch.

dress to His Majesty during the last session, (hereunto appended, marked H) respectfully but earnestly urging that the principles of the British Constitution respecting the advisers and confidential officers of the Government in this Province might be enforced, and intimating an intention on the part of the House, if these just and reasonable wishes were longer disregarded to withhold the supplies from a Government conducted in such a manner and by such officers: Your Honorable House has distinctly but respectfully declared to His Excellency its regret at the removal of the late Executive Council, and its entire want of confidence in the present members of it, and has humbly requested him to take immediate steps for their removal—nevertheless, they are retained, and the wishes of the representatives of the people constitutionally expressed are disregarded. No alternative is left to the House, in the opinion of the committee, but to abandon their privileges and honor, and to betray their duties and the rights of the people, or to withhold the supplies: the constitutional right of which is clearly acknowledged in Lord Glenelg's despatch, and also in His Excellency's reply to the late Executive Council, and in the language of Lord Stanley on the very subject of procuring a removal of advisers in this Province, "it is the constitutional mode of enforcing our wishes." All that we have done will otherwise be deemed an idle bravado, contemptible in itself and disgraceful to the House; and although in consequence of the law granting a perpetual civil list, which was ob-

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tained by Sir John Colborne's withholding a despatch that he had been directed to communicate to the Legislature, shewing that the Government only wanted the grant for seven years or during the life of the King, and which act received the approbation of His Majesty's Government, the refusal of the supplies cannot have its just constitutional influence, yet it will testify the feeling and the determination of the House more forcibly to His Majesty's Government, and will avail more than any thing else. It becomes the more necessary when it is observed that Lord Glenelg assumes in his Instructions to His Excellency—that until the last session there generally "subsisted a spirit of amicable co-operation between the Executive Government and the Legislature;" although so far from any such harmony subsisting, the majority of the House of Assembly in both the ninth and tenth parliaments were denounced by the adherents of the Provincial administration in unmeasured terms of abuse, and were represented as being opposed with even indiscriminate hostility to the arrangements and institutions of the Government.

Your committee therefore distinctly recommend to your Honorable House to withhold the annual supplies.

His Excellency, in answer to the address of your Hon. House respecting the present Executive Council, observes—"I might say that I had hoped the House would have refrained from any such decided expression of its opinion on the subject, until it had received the report of the com-

Com. distinctly recommends withholding the supplies.

His Ex^y expresses his hope that the House would have refrained until the report of a committee was made.

"mittee to whom the subject was referred, and for whom the Government Office is now occupied in furnishing the documentary evidence they desire, but I am unwilling to discuss the question."

Com hope that there never will be another so distinct a breach of the privileges of the House in which they are chided for not awaiting the report of a sel. com.

Your committee hope there is not now and never will be hereafter, another such a direct and violent breach of the privileges of the Commons House of Assembly; indeed, the assumption of power to chide the whole House for not awaiting a report from a select committee, can meet with a parallel only in the very worst periods of English history; surely such conduct was never intended and will never be countenanced by the British Government—observing the marked forbearance of your Honorable House, your committee dismiss this painful and humiliating subject, simply referring to the recent case of a similar nature in Jamaica, which is set forth in the following communication to his Excellency, the Governor of that Island, during its last session:

"MAY IT PLEASE YOUR EXCELLENCY:"

"We are ordered by the House to wait on Your Excellency with the accompanying resolutions, which have been agreed unto by the House:

Resolutions on a breach of privilege by the Governor of Jamaica.

"1st Resolved—That the first message of His Excellency, the Governor, of yesterday, is a direct breach of the privileges of this House, inasmuch as the subject matter of that message was then pending between the other branches of the Legislature."

"2nd Resolved—That this House cannot consistently with its own dignity, or with due regard to its rights and privileges, which are the firmest bulwarks of the liberties, franchises and immunities of the people, proceed to do any other business until reparation shall be made for this breach of privilege."

This Your Committee conceive is a just illustration of the resentment which such conduct deserves, and generally receives.

The attention of Your Committee has been recently drawn to a political address from the Grand Jury at the present assizes in this city, to His Excellency and His Excellency's answer. (See certified copies in the appendix marked U.) This Grand Jury, selected by Mr. Sheriff Jarvis, holding office during the pleasure of Sir Francis Head, style themselves "Grand Jurors representing the Home District!" There is no known law or constitutional usage under which the above gentlemen can claim the representative character; and it has ever been a subject of grievance and regret that the Executive Government have given a countenance to the political pretensions & sycophantic offerings of Grand Juries in this country. While they mix up with their judicial duties, the party feelings of the day, and present to the Lieutenant Governor with evident acceptability their political oblations, there can be no prospect of that cool, dispassionate and impartial conduct towards all classes of the people, required by their oath and prescribed by the law. The mixture of such matters in the public ordinances of religion or in the public administration of criminal justice must be revolting to every "*well constituted mind*," and is certain to contaminate what the dearest interests of society require to be pure and untainted.

The imposition of political duties upon the Chief Justice as Speaker of the Le-

Attention of com'te has been drawn to political address of Grand Jury of this city, titling themselves the representatives of the Home district, in support of which declaration there is no law.

That the Chief Justice should be Speaker of the Leg. Council is felt as a great evil and the mingling the judicial with the political concerns is but calculated to revive former scenes.

Foreman of Grand Jury selected by the Sheriff is a military man on full pay.

The same gentleman it appears has recently presided at political meetings.

gislative Council, against the repeated remonstrances of the people and their representatives, is felt to be itself a practical evil; and has no doubt also contributed to destroy that decorum in other branches of the Judiciary which might otherwise keep them aloof from voluntarily blending party politics with the duties of the Grand Jury Room. With the Grand Jury originate indictments for alleged political offences, and the practice of tampering with their own consciences by inflaming themselves with such unseasonable discussions, is calculated to revive the scenes acted in the administration of Sir Peregrine Maitland.

It is a striking fact that the foreman of this grand jury selected by Mr. Sheriff Jarvis, is a military gentleman on full pay on a temporary leave of absence, and who, although a son of the late Dr. Macaulay is personally known only to a few as an occasional visitor from military service. Your committee without meaning any personal reflection upon that gentleman, cannot but remark upon the conduct of Mr. Sheriff Jarvis in making such a selection, which appears to have been done to second the avowed intentions of the Lieutenant Governor to appoint him Surveyor General with the further plan of introducing him into the Legislative and Executive Councils. The same gentleman it appears has recently presided at political meetings in this city, and as a military man he seems unconscious of the impropriety of reacting the same scenes in the sphere of a Grand Juror.

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His Excellency's answer welcomes the adulation of the Grand Jury, and outstepping the limits of the address, he descants against "the ignominious tyranny" of the Executive Council of the Province which he styles "a secret metropolitan cabinet," thus deriding and vilifying the institutions of the country, while in obvious allusion to those who differ from him upon this "great constitutional question," he boasts of having "*repelled enemies*." Affairs assume a serious character when the representative of His Majesty arrays against himself as "*enemies*," whom he has "*repelled*" the great body of the people, who have long sought for a better constituted and more efficient Executive Council for the practical ends of Government. These hostile and inimical feelings indulged by His Excellency against so numerous a class of the Community, blast all our hopes of that impartial and conciliatory policy and constitutional system which have been promised by the British Government.

The committee have been obliged unavoidably, though reluctantly, to extend their report to a great, perhaps, an inconvenient length.

They think the subject, one of vital interest; and the present era an all-important crisis in our affairs. The despotic, unconstitutional principles announced and defended by Sir Francis Bond Head, and his avowed determination to adhere to them; the tyrannical and unjust conduct pursued by him towards the late Council; the bitterness of feeling which he is

The despotic and unconstitutional principles announced & defended by his Ex^y destroy all hope of a just administration under his guidance.

And renders it necessary to pray to his Majesty for relief

And that a memorial be sent to the H of Commons on the subject.

known to entertain towards all who think it their duty to oppose him; the intention which his public acts evince to perpetuate and aggravate the system and to cherish and favour the party so much complained of, yet so much fostered under his predecessor, destroy all hope that his administration of the Government can be just, satisfactory or useful to the country, or conducive to the honour and interests of the Crown; and make it, in the opinion of the committee, a necessary, though most painful duty on the part of your Honorable House, respectfully, but most earnestly to pray, that His Majesty's Government will seriously consider our situation, and afford us such relief as the exigency of the case requires. Respect for the Crown requires that this object should be sought in the ordinary way by an address to His Majesty only, but considering the usual manner in which our representations have been viewed and treated at the Colonial Office, we recommend that a memorial should be also addressed by Your Honorable House to the House of Commons; a body who understand and feel the value and importance of those principles for which we are contending. The committee have prepared an address to the King and a memorial to the House of Commons, in conformity with these views, which they beg leave respectfully to submit herewith, and recommend, that a copy of this Report, with the Appendix and memorial to the House of Commons, be presented to His Excellency with the Address, and a request, that he will be most graciously pleas-

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ed to transmit the same to His most Gracious Majesty, the King.

They submit the whole with a deep and solemn sense of the great responsibility which now rests upon the House of Assembly. The state of our public affairs, apparently growing worse instead of being improved, the dissatisfaction and anxiety of the people, the determination of the Government to defend and enforce arbitrary principles, and to oppose the application and the operation, in this Province, of acknowledged and essential principles of the British Constitution, and the comparisons which are every day made between our condition on the one hand, and on the other hand, the prosperity of all classes, the activity of business, and the improvements of all kinds in the adjacent country, are considerations which cannot be disregarded.—Blessed with a fine and healthy climate, a productive soil, unequalled natural facilities for internal communication and an industrious and enterprising population, we ought to see the country flourish and improve, at least, as much and the people as happy, prosperous and contented under the British Constitution (if we were permitted to enjoy it, in its full and beneficial operation) as could be realized under a different form of Government.

The committee are not willing to believe the contrary.

But that a system, which has long rendered unavailing the natural advantages of the country and paralyzed its youthful energies, should now of a sudden produce contrary effects, is not to be expected.

The state of public affairs are becoming worse instead of better, and the comparison of the state of our Province with that of our neighbors cannot be disregarded.

As it is the duty of Parliament to legislate, so it is the duty of the Executive to advise.

Great as is the Constitutional question for which the country contends, it is simple in its nature. We have under the 31st Geo. 3d. an Executive Council, constituted by the Royal Instructions; this Executive Council we desire to see discharging the duties belonging to such a Council;—as it is the duty of Parliament to legislate, so it is the duty of the Executive Council to advise.

It has been simply proposed that our public affairs should pass under their review preparatory to the final and discretionary action of the Governor upon them; and assuredly the people upon whose affairs and highest interests the advice is given, should be allowed to see the Representative of the King surrounded by men alike possessing his confidence and that of the country.

The great question is whether we shall enjoy the acknowledged principles of the British constitution.

The great question now before your Honorable House and the country, is not whether we are to have the Constitution and form of government of the United States introduced and established among us, but it is simply whether we (His Majesty's subjects in Upper Canada) shall enjoy acknowledged principles of the British Constitution?

Whether we shall have the same rights and privileges that are enjoyed by our fellow subjects in the United Kingdom, and which has always heretofore been admitted in theory but denied in practice?

Whether the advisers of the Lieutenant Governor, the Executive Council, are to be gentlemen of sound principles, known and possessing the confidence and esteem

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of the people, whom they are sworn to serve as well as His Majesty, or to be persons unknown and irresponsible, and consequently under no restraint or accountability for the advice they give or means (honorable or dishonorable) they use to accomplish their ends?

If we have at the head of our local affairs not a Representative of the King, but a mere Minister, culpable for all misdoings in our government, there is no reason why he should longer be held (as heretofore) above the law of the land. If on the one hand, we ask for the beneficial operation of the Executive Council, the answer is, I am only in the place of a Minister, answerable for my own acts and those of my Council into the bargain—and when on the other hand, you desire to proceed against him for any wrong, the character is shifted from a mere Minister into a Representative of the King, who can do no wrong, and is above all law—one day he is a Minister in order to assume power and act wrongfully; another day he is Representative of the King, to oust the Courts of Justice of their jurisdiction. He assumes one character for *license*, and another for *defence*.

Your Committee desire to remark that our other institutions have often in times past been subjected like the Executive Council, to similar attempts to cripple or abridge their constitutional rights and character. Your Honorable House was at one time denied the privilege which necessarily and constitutionally appertains to Parliament, viz: the right to enquire into

If we have at the head of affairs one who does not represent the King, there is no reason why he should be longer so looked upon.

Committee remark on the case of the outrage on the property of Mr Forsyth.

public abuses, and they were not established on their present broad, firm, and acknowledged basis without appeals to England and litigation in our courts of law. During the ninth Parliament occurred the arbitrary outrage upon the rights and property of Mr. Forsyth by Governor Maitland with Military force under the legal advice of the Attorney General (since promoted to the Chief Justiceship of this Province) and supposed to have been under the advice of the then Executive Council. This flagrant wrong became the subject of enquiry before a Committee of Your Hon. House and Messrs. Givins and Coffin were attempted to be sustained by Governor Maitland in their refusal to obey a summons to give evidence—in fact they read his express orders not to attend. Thus in the illustration of the alleged sufficiency of Downing Street responsibility by Governors, it appears that an outrage is perpetrated first, and then Executive authority, influence and power exerted to prevent investigation. Nor was this all; for Sir P. Maitland further tried to poison what justice might be expected from His Majesty by writing a calumniating despatch, giving a bad character to Mr. Forsyth, and traducing as factious the Assembly that interposed in his behalf. The ninth Parliament proceeded to the arrest and imprisonment of the refractory officials; and although Sir George Murray, then Principal Secretary of State for the Colonies, rebuked Sir P. Maitland for his long and artful despatch against our Parliamentary privileges, yet he was never

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tenth Parliament the Attorney General,
since Chief Justice of Newfoundland,
reacted the same dispute of the privileges
of the Provincial Parliament, and it was
not until the present Speaker of Your
Honorable House was prosecuted for
his warrant and that an adjudication
of the Court of King's Bench, after elabo-
rate argument had placed the question out
of the reach of further denial that that
right was acknowledged. When, there-
fore, it is considered with what trouble and
vexation, and against what executive in-
fluence and calumny the privileges of
Parliament have been asserted and main-
tained, it is less surprising that the consti-
tutional duties and functions of the Exe-
cutive should factiously be denied. The
privileges of Parliament were not more
obvious and certain, or more important
than the duties and functions of the Exe-
cutive Council for the peace, welfare and
good government of the country; and it
only needs on the part of the people and
their representatives the same firm and
constitutional exertions to insure the same
success in the present all important contest.

All which is respectfully submitted.

Peter Perry, CHAIRMAN.
T. D. Morrison,
John P. Roblin,
Hiram Norton,
Charles Duncombe.

Committee Room, House of Assembly, }
April 14th, 1836.

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APPENDIX.

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A.

EXECUTIVE COUNCIL CHAMBER, AT TORONTO, }
Friday, 4th March, 1836. }

*To His Excellency, Sir Francis Bond Head, Knight,
Commander of the Royal Hanoverian Guelphic
Order, Knight of the Prussian Military Order of
Merit, Lieutenant Governor of the Province of
Upper Canada, &c. &c. &c.*

MAY IT PLEASE YOUR EXCELLENCY,

The Executive Council, impressed with the oath they have taken to discharge the duties necessarily resulting from their appointment "to advise the King and his Representative in the government of this Province," in the terms of the Constitutional Act "upon the affairs of the Province," deem it incumbent upon them, most respectfully to submit the following representation:

The Executive Council recognize the truth of the opinion expressed by Lord Glenelg, that "the present is an era of more difficulty and importance, than any which has hitherto occurred in the history of this part of His Majesty's dominions." This unhappy condition they ascribe in a very great degree, to the hitherto unconstitutional abridgment of the duties of the Executive Council. It appears from the proceedings of the House of Assembly, and from the re-iteration of established opinion in the country, that neither will public expectation be satisfied, nor contentment be restored, until the system of local government is altered, and conducted according to the true spirit and meaning of the Constitutional Act. The delay of this just and indispensable course, has already excited in the great mass of the people, a lamentable jealousy and distrust, and has also induced the discussion of Constitutional changes, the desire for which, unless speedily arrested, by affording the unrestricted operation of the 31st Geo. 3d, chapter 31, will not only become more fixed, but rapidly increase to a greater and irretrievable extent.

The policy and measures which have led to the present condition, seldom passed under the review of the Executive Council, or were submitted for their advice. Nevertheless, its members have been undeservedly subjected to the heaviest reproach throughout the country, from a prevalent belief that they have been called upon to fulfil the duty imposed upon them by the constitu-

tion, as advisers upon public affairs. But amidst the obloquy thus thrown upon them, they have studiously avoided any attempt at exculpation, by disavowing in their defence, any participation in the conduct of the affairs which they were erroneously supposed to have approved. The consequence of this silent indurance of political odium, has been the perpetuation of the misbelief, that the Executive Council are conversant with the affairs of the Province, upon which they are appointed to advise: and although an opposite practice has generally prevailed between former Lieutenant Governors and their Council, yet it has ever been notoriously contrary to the state of things presumed by the community to exist.

Public opinion respecting the Executive Council and their duties, has been founded upon the terms of the 31st Geo. 3d, chap. 31, to which statute the people used to express a firm attachment, an attachment which, the Council believe, never would have been impaired had the Constitution been administered either according to its letter or its spirit.

In several clauses of the 31st Geo. 3d, chapter 31, the Executive Council is mentioned in general terms. In the 34th clause the terms are "together with such Executive Council as shall be appointed by His Majesty for the affairs of such Province," and not, as it would otherwise have been expressed "together with such Executive Council as shall be appointed by His Majesty for that purpose." In the 38th clause the terms are, "with the advice of such Executive Council as shall have been appointed by His Majesty, His Heirs, or Successors, within such Province for the affairs thereof," and not, as it would otherwise have been expressed, "with the advice of such Executive Council as shall have been appointed by His Majesty, His Heirs or Successors, within the Province for that purpose."

The same may be said of similar terms used in the latter part of the seventh clause.

With respect to which clauses it may be further remarked, that had it been contemplated that the Executive Council were to act only in the matters therein specified, the words "on the affairs of such Province," might have been omitted, without in the least impairing the legal effect. In the construction, therefore, of this statute, the above expression cannot be treated a surplusage, but must be taken to impose the duty which it imports.

From the language, of this statute, therefore, it appears—

Firstly—That there is an Executive Council;—Secondly—That they are appointed by the King;—Thirdly—That they are appointed to advise the King and his Representative, upon the "affairs of the Province,"—no particular affairs are specified; no limitation to any particular time or subject. As the Constitutional Act prescribes to the Council, the latitude of "the affairs of the

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Province," it requires an equal authority of law to narrow those limits, or relieve the Council from a co-extensive duty.

Every Representative of the King, upon arriving from England to assume the government of this country, is necessarily a stranger to it; and the law has provided for a local Council as a source of advice, which when given, is followed or not, according to his discretion. In certain cases specified in the 38th clause of the 31st Geo. 3d, chapter 31, the concurrence of the Council is required to give effect to certain Executive Acts. But these exceptions prove the general rule, viz:—That while the advice is to be given upon the affairs of the Province generally, it is only in the particular cases that it must harmonize with the pleasure of the Crown, to give that pleasure effect. Indeed, if the law could be construed to limit the advice to the particular cases, it would follow that the Council could not legally advise upon any others; a proposition which, besides its manifest repugnance to the terms of the Act, is contrary to received opinion and usage.

But while the Constitution has assigned to the Council this duty, it is only to a very subordinate and limited extent that they have hitherto had opportunity afforded them to perform it. It is submitted that the exigency of the statute can only be answered by allowing the affairs of the Province to pass under their review for such advice as their consciences may suggest, preparatory to the final and discretionary action of the King's Representative upon those affairs.

The Council meeting once a week upon land matters, while the affairs of the country are withheld from their consideration and advice, is as imperfect a fulfilment of the Constitutional Act, as if the Provincial Parliament were summoned once a year, to meet the letter of the law, and immediately prorogued upon answering the Speech from the Throne. In both cases the true meaning and spirit of the Constitutional Act require that the Parliament should have a general and practicable opportunity to legislate, and the Executive Council to advise upon the affairs of the country. In the former case, the Representative of the King can withhold the Royal Assent from Bills, and in the latter, reject the advice offered; but their respective proceedings can not be constitutionally circumscribed or denied, because they need the expression of the Royal pleasure thereon for their consummation.

The extent and importance of the affairs of the country, have necessarily increased with its population, wealth, and commerce; and the Constitution has anticipated the difficulty by a division of labor and responsibility from the active attention of the Executive Council to their duties. With the exception of those matters of so weighty or general a character, as not properly to fall under any particular department, and therefore fitted for the deliberation of the Council collectively, it is recommended that the affairs of the Province be distributed into departments, to the heads of

which shall be referred, such matters as obviously appertain to them respectively. Upon this principle, (recognized by the existing Constitution of this Province, and of the mother country,) the people have long, and anxiously sought for the administration of the government, under the Representative of the King; and the Council most respectfully, but at the same time earnestly, represent that public opinion upon the subject is so fixed, and becoming so impatient, as to preclude the possibility of denying or delaying the measure, without increasing public dissatisfaction, and leading to the final adoption of other views, as already too universally manifested, uncongenial to the genius of the constitution, and most dangerous to the connexion with the Parent State.

The remedy, it is feared, is now proposed too late for all the advantages desired; but the longer it is withheld, the more alienated and irreconcilable will the public mind become. The present comparative calm and thankfulness arise from a belief that the Council will second this exigency, in establishing a system of government, according to the principles recognized by the charter of the liberties of the country—an expectation which the Council are most anxious to realize.

Should such a course not be deemed wise or admissible by the Lieutenant Governor, the Council most respectfully pray that they may be allowed to disabuse the public from a misapprehension of the nature and extent of the duties confided to them.

(Signed)	PETER ROBINSON,
"	GEORGE H. MARKLAND,
"	JOSEPH WELLS,
"	JOHN H. DUNN,
"	ROBERT BALDWIN,
"	JOHN ROLPH.

B

REPLY

Of His Excellency the Lieutenant Governor to the communication of the Executive Council.

F. B. HEAD,

The Lieutenant Governor transmits to the Executive Council the following observations in reply to the document, which in Council they yesterday addressed to him:

The constitution of a British colony resembles, but is not identical with the constitution of the mother country; for in England, besides the House of Commons, which represents the people, there exists a hereditary nobility, the honors and wealth of which, as well as the interests of the established church, are

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represented by a House of Lords, while the Sovereign (who by law can do no wrong,) is surrounded by a Ministry upon whom devolves the entire responsibility of the measures they suggest, and who are consequently removable at pleasure. But in the colonial portion of the British Empire, which however rising, is generally speaking thinly inhabited, the people are represented by their House of Assembly, which is gifted not only with the same command over the supplies, as in England, but which possesses within the colony most of the powers of the British House of Commons.—The Legislative Council is intended, as far as the circumstances of a young colony can permit, to resemble the British House of Lords; and if the Lieutenant Governor of a colony stood in the place of the Sovereign, and if like His Majesty, he could do no wrong, it would evidently be necessary that a Ministry, Executive Council, or some other body of men should be appointed, who might be responsible to the country for their conduct. This, however, is not the case;—His Majesty delegates His Sovereign protection of his colony to no one, but he appoints a Lieutenant Governor, who is responsible to him for his behavior, who is subject to impeachment for neglecting the interests of the people, and who is liable, like the English Ministry to immediate removal; and the history of the British colonies clearly shews, that there is no class or individual of His Majesty's subjects, to whose representations, prayer or petition, the King is not most willing to attend.

The Lieut. Governor is therefore the responsible minister of the colony, and as not only his character, but his continuance in office, depend on his attending to the real interests of the people, it would be evidently as unjust towards him that he should be liable to impeachment for any acts but his own, as it would be unjust towards the people, that a responsibility so highly important to their interests, should be intangible and divided. It is true, his knowledge of the country is not equal to that of many intelligent individuals within it; but in government, impartiality is better than knowledge, and it must be evident to every well constituted mind, that in an infant state of society, it would be impossible practically to secure a sufficient number of impartial persons to effect a change of ministry, as often as it might be necessary for the interests of the people to do so.

This difference between the constitution of the mother country and that of its colony, is highly advantageous to the latter, for as in all small communities, private interests and party feelings must unavoidably be conflicting, it is better as well as safer, that the people should be enabled to appeal in person, or by petition, to the Lieutenant Governor himself, whose duty it is to redress their complaints, and who is liable to dismissal if he neglects them,—than that they should appeal to a series of Provincial Ministers, composed of various individuals.

To enable the Lieutenant Governor to perform the arduous duties of his office, the constitution has wisely provided him with an Executive Council, competent to supply him with that local knowledge in which he may be deficient, and to whom he may apply for counsel and advice.

Before he entrusts himself to these gentlemen, they are, by order of His Majesty, required solemnly to swear, not only to give to the Lieutenant Governor their best counsel and advice, but they are also sworn to secrecy.

Their individual opinions can never be divulged, *even to the King*, and as a proof that His Majesty does not hold them responsible for the acts of the Lieutenant Governor, they can retain, and often do retain, their office of sworn advisors, although Governor after Governor may have been dismissed.

The advantage of such a council to a Lieutenant Governor is so self-evident, that he must be weak and self-sufficient indeed, who does not continually have recourse to it; but although it strengthens his judgment, and confers dignity on his proceedings, yet it in no way shields him from disgrace, should his acts be found contrary to the interests of the people. In such a case, it would be vain, as well as unconstitutional, for a Lieutenant Governor to attempt to shield himself from responsibility, by throwing it upon his council, for by his oath, he cannot even divulge which of his advisers may have misled him.

Supposing, for instance, that with the concurrent advice of his council, he was illegally to eject by military force an individual from his land, the Lieutenant Governor would be liable to arraignment, and whether he had acted by the opinion of the law officers of the crown, by the advice of his council, by information derived from books, or from his own erring judgment, it has been wisely decreed that the injured subject should look to him and him alone for retribution, and that he and he alone is answerable to his Sovereign for the act of injustice which has been committed.

Being, therefore, subject both to punishment and disgrace, it is absolutely necessary, as well as just, that the Lieutenant Governor of a colony should have full liberty to act, (though at his peril,) in every case, as he may think best for the interests of the people, according to the commands of His Majesty, and of His Majesty's Ministers.

To consult his council on the innumerable subjects upon which he has daily to decide, would be as utterly impossible, as for any one but himself to decide upon what points his mind required or needed not the advice of his council. Upon their sterling fund, he must therefore constitutionally draw, whenever embarrassment requires it, and on their part, if they faithfully honor his bills, however often he may present them, they conscientiously fulfil to their Sovereign, to him, to their country, and to their oath, the important duty which they have sworn in secrecy to perform.

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Having concluded the above outline of the relative responsibility of the Lieutenant Governor and his Executive Council, as it regards His Majesty's colonies in general; it may be observed with respect to this Province in particular, that when His Majesty, by conquest, first obtained possession of the Canadas, the government thereof devolved upon its military commander, until, by an Act passed in the 14th year of George 3rd, a council was appointed "for the affairs of the Province of Quebec, to consist of such persons resident therein (not exceeding 23, nor less than 17,) as His Majesty, his heirs and successors shall be pleased to appoint," "which council so appointed and nominated, or the major part thereof, shall have power and authority to make ordinances for the peace, welfare, and good government of the said Province, with the consent of His Majesty's Governor."

This power of the council was further restricted by certain important limitations, specified in clauses 13, 14, 15, 16, and 17, of the said act; however, in the year 1791, a new act was passed, commonly called "the Constitutional Act," because it settled the constitution of the Canadas, which were then divided into the Upper and Lower Provinces.

By this act the military domination of the General and his council, was changed for a new and settled system, and as evidently both could not exist together, the very first clause of the act declared, that so much of the late "Act 14th George 3d as in any manner relates to the appointment of a council for the affairs of the said Province of Quebec, or to the power given by the said act to the said council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant Governor, or Commander in Chief for the time being, shall be, and the same is REPEALED."

The act then proceeds to state, that there shall be within each of the said Provinces respectively, a Legislative Council, and an Assembly, the duties and privileges of which are minutely declared in 33 consecutive clauses, but in no part of the said act was an Executive Council directly or indirectly created. Nevertheless, a vestige of the ancient one, was for the purpose of a Court of Appeal, (vide clause 34) recognised, with an expression which seemed to intimate, that an efficient Executive Council would very shortly be created.

For instance, in section 38, the Governor is, by authority of His Majesty's Government, and with the advice of the Executive Council, "empowered to erect parsonages and rectories," but in section 39 no mention whatever is made of the Executive Council, but on the contrary it is declared, that the Governor or Lieutenant Governor, or person administering the government should present the incumbent "to every such parsonage or rectory."

In the 50 clauses of the act in question the Executive Council which in section 34 is merely described as "such Executive Council as *shall be* appointed by His Majesty," is scarcely mentioned, and as regards even its existence the most liberal construction which can possibly be put upon the said act, only amounts to this:—That as an Executive Council was evidently intended to exist, the remnant of the old one ought not to be deemed totally extinct, until its successor was appointed.

However, this latent intention of His Majesty to create a council for each of the Provinces of His Canadian dominions, was soon clearly divulged in a most important document, commonly called "*The King's Instructions*," in which an Executive Council was regularly constituted, and declared as follows:—"Whereas we have thought fit that there should be an Executive Council for assisting you or the Lieutenant Governor, or person administering the Government of the said Province of Upper Canada, for the time being, we do by these presents appoint the undermentioned persons," &c. &c.

In subsequent clauses it was equally precisely defined, upon what affairs of the Province the Lieutenant Governor was to act, "*with the advice of the Executive Council*," but with the view distinctly to prevent the new council being what the old one had been (which indeed under the new constitution was utterly impossible) in short to set that question at rest for ever, it was declared in section 8th, "that to the end that our said Executive Council may be assisting to you in all affairs relating to our service, you are to communicate to them *such and so many* of our instructions *wherein their advice is mentioned to be requisite*, and likewise all such others from time to time, as you *SHALL FIND CONVENIENT* for our service, *to be imparted to them*."

The Lieutenant Governor having now transmitted to the Executive Council his opinion of their duties, in contradiction to that contained in their communication to him of yesterday's date, will not express the feelings of regret, with which, under a heavy pressure of business, he unexpectedly received a document of so unusual a nature, from gentlemen upon whom he had only recently placed his implicit and unqualified reliance. But he feels it incumbent upon him frankly and explicitly to state, that to the opinions they have expressed he can never subscribe, on the contrary, that so long as he shall continue to be Lieutenant Governor of this Province, he will never allow his Executive Council officially to assume that heavy responsibility which he owes to his Sovereign, as well as to the people of this Province, to whom he has solemnly pledged himself "*to maintain the happy constitution of this country inviolate, but cautiously yet effectually to correct all real grievances*."

The Lieutenant Governor maintains that the responsibility to the people of this Province (who are already represented by

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their House of Assembly) which the council assume, is unconstitutional—that it is the duty of the council to serve *him*, not *them*; and that if upon so vital a principle, they persist in a contrary opinion, he foresees embarrassments of a most serious nature, for as power and responsibility must in common justice be inseparably connected with each other, it is evident to the Lieutenant Governor, that if the council were once to be permitted to assume the *latter*, they would immediately as their right, demand the *former*, in which case if the interest of the people should be neglected, to whom could they look for redress? for in the confusion between the Governor and an oligarchy composed of a few dominant families, shielded by secrecy, would not all tangible responsibility have vanished?

The council cannot have forgotten, that previous to their first meeting in the council chamber, which happened only a few weeks ago, the Lieut. Governor had assured them in a note (which was even publicly read in the House of Assembly) that although he had no preliminary conditions to accede to or require, it was his intention to treat them with implicit confidence; and the council must also remember how willingly they approved of the very first suggestion he made to them, namely, that no important business should be commenced in council until they, as well as the Lieutenant Governor himself, had become mutually acquainted with their respective duties.

The Lieutenant Governor assures the council, that his estimation of their talents and integrity, as well as his personal regard for them, remain unshaken, and that he is not insensible of the difficulties to which he will be exposed should they deem it necessary to leave him, at the same time should they be of opinion that the oath they have taken requires them to retire from his confidence, rather than from the principles they have avowed, he begs that on his account, they will not, for a moment, hesitate to do so.

Government House, Toronto, March 5th, 1836.

C

Front Street, 16th March, 1836.

DEAR SIR:

Myself and my colleagues having felt it our duty to tender our resignations, and the Lieutenant Governor having been pleased to accept them; I waited on His Excellency to request his permission to make public in the usual parliamentary way, the steps which led to the formation of His Excellency's late Cabinet, and the circumstances which occasioned its dissolution, to which His Excellency in the handsomest man-

ner frankly acceded, most graciously assuring me that his confidence in me personally was such, that he presented me with a *charte blanche* to state the whole from the commencement of the negotiations to the acceptance of our resignations.

None of the members of the late provincial administration having the honor of a seat in the *Communes*, I know of no way in which such information can be more respectfully communicated than in a letter addressed to you, for the purpose of being read in your place; or of the House being put in possession of its contents in whatever other way your more intimate acquaintance with parliamentary forms may suggest.

I therefore beg leave to state, that His Excellency having done me the honor to send for me explained the position in which he found himself placed on assuming the Government of the Province, and declaring himself most anxious to do the best he could to insure to the Province good and cheap government—expressed himself most desirous that I would afford him my assistance by joining his Executive Council, assuring me that in the event of my acceding to his proposal, I should enjoy his full and entire confidence. I informed His Excellency of my extreme reluctance to again embark in public life, and proceeded to state that notwithstanding such reluctance, and reserving to myself the option of declining to accept the seat which His Excellency had tendered to me on private grounds merely, I yet felt that as His Excellency had done me the honor of sending for me, I would not be performing my duty to my Sovereign or the country, if I did not with His Excellency's permission, explain fully to His Excellency my views of the Constitution of the Province, and the change necessary in the practical administration of it, particularly as I considered the delay in adopting this change as the great and all absorbing grievance, before which all others, in my mind sunk into insignificance;—and the remedy of which would most effectually lead, and that in a constitutional way, to the redress of every other real grievance, and the finally putting an end to all clamor about imaginary ones; and that these desirable objects would thus be accomplished without in the least entrenching upon the just and necessary prerogatives of the crown, which I considered, when administered by the Lieutenant Governor through the medium of a Provincial Ministry, responsible to the Provincial Parliament, to be an essential part of the Constitution of the Province. That these opinions were not hastily formed—that they were on the contrary those which I had imbibed from my father, who tho' now for some years as well as myself unconnected with public life, had formerly held a much more distinguished position in the politics of the country than I could pretend to, and that they were opinions which the experience of every year had more and more strengthened and confirmed; that I felt convinced that the prompt adoption of those

views was the only means of consolidating the connection with the Mother Country, to the preservation of which no one was more devotedly attached, or ready to make greater sacrifices than myself;—that they were nothing more than the principles of the British Constitution applied to that of this Province, and which I conceived necessarily to belong as much to the one as the other;—that the call for an Elective Legislative Council which had been formally made from Lower Canada, and had been taken up and appeared likely to be responded to in this Province, was as distasteful to me as it could be to any one, as all that appeared necessary or desirable was the Constitution, as it stood, fully and fairly acted upon; and that I was convinced, that had such a course been adopted some years ago, we should not now have had the public discussing the expediency of an alteration in the constitution by the introduction of a provision for an elective Legislative Council;—that I feared it might now be too late, but as I was not sufficiently aware of the exact state of the question to speak decidedly, I sincerely hoped that by the prompt adoption of a responsible Provincial Administration, under the King's Representative, the question might even yet be set at rest; and in reply to an objection of His Excellency, that the adoption of such a course would be placing the Lieutenant Governor in a position similar to that of the King, which was inconsistent with the fact of his responsibility, I explained,—that as far as regarded the internal affairs of the Province, the Lieutenant Governor was in a point of fact, as far as this Province and its Parliament were concerned, as completely irresponsible as the King himself; as there certainly neither existed, nor in my opinion ought to exist, any legal or constitutional means of calling him to account in this country, for any act of his government;—that his responsibility was to the King and Parliament of the empire; and was perfectly proper and necessary for the preservation of the paramount authority of the Mother Country, and the protection of her interests in matters properly and constitutionally belonging to the exercise of that authority; but that what the Constitution required was that there should be persons within this country itself, who could be made responsible to the Provincial Parliament here, for the administration of the internal affairs of the Province.

To another objection of His Excellency, that the adoption of my views would deprive the Lieutenant Governor of all power, and convert him into a cypher; I distinctly denied any such as a consequence of my principles, as I fully admitted the Lieutenant Governor to be constitutionally clothed, as the Royal Representative, with the same powers within the Province, with respect to its internal affairs, as those possessed by the King himself with respect to the affairs of the empire at large;—which appeared to me to be all that he could desire, and at all events all that the Constitution had given him;—that he had always the

same constitutional right to accept or reject the advice of any of his Executive Councillors, and that as in England the only alternative for them was to resign, when they and the Lieutenant Governor differed on any point which they conceived of sufficient importance to call for such a step; in which event the Lieutenant Governor was perfectly free to call to his Council whom he pleased. His Excellency very candidly declared his entire dissent from such views and opinions, he nevertheless, with the most gracious expression of satisfaction at the very full and candid manner in which I had opened them to him, renewed his solicitation for my acceptance of a seat in the Executive Council; suggesting as an inducement for such acceptance, the increased facilities which by my place in the Executive Council would be afforded towards the more efficiently representing and urging my views—His Excellency declaring that his doors should at all times be open to me, and that he should be most happy to listen, and give his most serious consideration, to any subject which I might at any time think it important to lay before him :—His Excellency always reserving the right to decide for himself,—His Excellency at the same time remarking that he had no objection to the Council each continuing to entertain and urge his individual opinions, as the opinions of one would be neutralised by those of another.

I then informed His Excellency that upon the principles which I had opened to him, there were two grounds upon which I could not consistently comply with His Excellency's wishes; first, that no Provincial Administration would in my opinion be capable of affording His Excellency that assistance and support which his government would require, unless sufficiently possessed of the confidence of the Provincial Parliament, to ensure majorities in it; and that I did not feel that that confidence could be obtained without farther assistance; and secondly, that although in private life I was on perfectly good terms with all the gentlemen who then composed His Excellency's Executive Council, and on most friendly terms with one them; yet that as public men, I had in them no confidence whatever, and had formerly, when in public life, denounced them and those with whom they acted, as politically unworthy of the confidence of the country—and therefore that I felt that I could not take office with them.

At length after a consultation, held by His Excellency's permission, with Dr. Rolph and my father, I finally, on the two grounds above mentioned, declined to accept a seat in the Executive Council.

It is proper that I should here remark, that though these principles were fully opened to His Excellency at my first interview, some parts of the conversation above adverted to, (though I believe none that could be considered essential to the full exposition of the principles themselves) passed during the subsequent

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interviews which I had the honor of having with the Lieutenant Governor, in the course of the negotiation.

Having been subsequently again sent for by His Excellency, and requested to state more explicitly what the assistance was to which I had before alluded, I replied that I considered the assistance of Dr. Rolph, Mr. Bidwell, my Father, and Mr. Dunn in the Executive Council, most desirable; and that of Dr. Rolph as absolutely necessary to insure that public confidence in His Excellency's Government, without which I was convinced His Excellency with the best intentions in the world, would fail to accomplish those desirable objects which he had in view.

His Excellency after an interview which he informed me he had had with Mr. Bidwell, again opened the negotiation by a renewed tender of a seat in the Executive Council, giving me at the same time to understand, that if accepted, he was prepared to afford me the assistance of Dr. Rolph and Mr. Dunn, should these gentlemen have no objections to join me.

Upon this, with His Excellency's permission, I again consulted with Dr. Rolph, Mr. Bidwell and my Father, and I feel it due to the two latter to take this opportunity of stating, that I received the fullest assurance of their most cordial support to a cabinet composed of Dr. Rolph, Mr. Dunn, and myself—and the expression of their opinions that, in the present conjuncture of public affairs, their being taken into the cabinet ought not to be further urged,—which disinterested course on their part, so consistent with the position which they hold in the public confidence, the country I am persuaded cannot fail to appreciate. This renewal of the negotiation was, however, ultimately closed by my again finally declining to accept office, in consequence of His Excellency not feeling himself justified in consenting to the removal of those gentlemen who were already in the Council.

Upon this, His Excellency sent for my Father, to whom he made a similar tender of a seat in the Executive Council, and his fullest confidence in the event of his accepting it, and I am authorised to say that Dr. Baldwin on that occasion, informed His Excellency that his views and principles were similar to those which had been already fully laid before His Excellency by me; and that he felt it impossible to take office in conjunction with the three gentlemen who then formed His Excellency's Executive Council.

His Excellency then sent for Dr. Rolph to whom he made a similar tender of his confidence, Dr. Rolph having obtained His Excellency's permission to consult Mr. Bidwell, Mr. Dunn, my Father, and myself, it was in the course of that consultation pressed upon me, that as the principle of responsibility although long before the public had never yet been practically acted upon, and that taking it for granted (as it was but justice to His Excellency to do) that His Excellency, although mistaken in his

views of the Constitution of the country, might yet be sincerely desirous of governing according to that Constitution, and that in that case all that would be found necessary was to convince him that the views and principles which I had opened to him were just and constitutional, to insure their adoption, or the procurement of His Excellency's influence to obtain their adoption, and that notwithstanding what His Excellency had said with respect to the opinions of one member of the Council being neutralised by those of another, which appeared to arise more from a want of sufficient practical acquaintance with the workings of the political machinery of Government, which time and experience would necessarily correct, than from any other cause; it would perhaps not be performing our duty to His Excellency or the country, were we, after his having gone thus far to meet our views peremptorily to refuse all concession on our part.

To this reasoning having given a most reluctant consent, I empowered Dr. Rolph, in accordance with the course deemed by him most respectful to His Excellency, to state to the Lieutenant Governor that I was willing with His Excellency's permission, to reconsider His Excellency's proposal, and to consider the negotiation re-opened, upon the footing on which it stood previous to its having been last closed with me,—to which His Excellency having at once acceded, and the negotiation having been thus re-opened, after some further consultation upon the subject with Mr. Dunn, His Excellency was finally informed that Mr. Dunn, Dr. Rolph and myself had, though reluctantly, consented in compliance with His Excellency's wishes, and as a mere experiment, and one which we feared would fail, to accept seats in His Excellency's Executive Council, without the retirement of the three gentlemen who were already members of it.

Afterwards, on our all waiting on His Excellency, previous to our being sworn, I pointed out and insisted upon the necessity, that lest compromise of principle might be imputed to us, in consequence of the course we had taken, which in the public eye must necessarily appear equivocal, some announcement should be made of the unfettered terms upon which His Excellency was pleased to receive us into his confidence; which at His Excellency's suggestion was finally arranged to be in the shape of a note to that effect, to be addressed to me (as the person first sent for) by His Excellency, and of which I was to be at liberty to make any use that I might deem necessary or proper; which note was at my request, in accordance with the gracious permission which I had received, read publicly by a member of each House of Parliament in his place,—this being the only manner in which it appeared to me the information which it was necessary that the public should be in possession of could be communicated, consistently with the respect due to a communication, from the Representative of the King.

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Copies of this note and of my acknowledgment of the receipt of it I subjoin. These negotiations, partly retarded by my absence in the country, were in progress from the 8th until the 20th ultimo, on which day we were sworn into office.

Having thus explained the circumstances which led to our appointment, I have only to add with respect to our retirement from office, that the principles, the facts and the views which were afterwards embodied in the formal representation of the Executive Council were (at least ten days before being thus formally presented by His Excellency for consideration) at very considerable length, amicably discussed between the members of the Executive Council and His Excellency, and afterwards continued the subject of deliberate consideration among the members themselves for another week, when on the fourth of this month, the formal representation alluded to was unanimously adopted and presented to His Excellency, with respect to which I shall only add, that the course of local Government, and the reasons for it, set forth in the representation from the Council were thus officially suggested to the more formal consideration of His Excellency, from a solemn conviction that it was the only system which would operate "for the good of the King and of this Province, and for the peace, rest and tranquility of the same."

To this representation the Executive Council on the following Thursday, being the next regular Council day, received His Excellency's reply. In this reply His Excellency having intimated his wish "that should the Executive Council be of opinion that the oath they had taken required them to retire from His Excellency's confidence, rather than from the principles they had avowed, they would not on his account for moment hesitate to do so." The members of the Council on Saturday last waited on His Excellency, and tendered their resignations—which His Excellency was graciously pleased to accept; with respect to which I would here take the liberty of remarking, that having in the representation alluded to, but reiterated in a more formal manner in conjunction with my colleagues under the sanction of the oath which I had in the meantime taken, the same principles and opinions which His Excellency knew me to entertain previous to his honouring me with a seat in his Council, however desirous I might be of giving my best support to His Excellency's Government, or of not hastily abandoning the important duties of my situation, which had been most unwillingly assumed, I could not for a moment hesitate, when the alternative presented to me was the abandonment either of my principles or my place.

I have the honor to be,

Dear Sir,

Your most obt. humble serv't,

(Signed) ROBERT BALDWIN.

PETER PERRY, Esquire, M. P.

Copy.

*Government House, }
February 19th, 1836. }*

DEAR SIR:

I have great pleasure in learning that you, Doctor Rolph, and Mr. Dunn accept the invitation I have made to you, by joining the Executive Council.

The confidence I shall repose in you will be implicit, and as I have no preliminary conditions either to accede to or require from you, I shall rely on your giving me your unbiassed opinion on all subjects, respecting which I may feel it advisable to require it.

I remain dear Sir,

Your's faithfully,

(Signed) F. B. HEAD.

R. BALDWIN, Esq.

[Copy.]

Mr. Robert Baldwin has the honor to acknowledge the receipt of His Excellency, the Lieutenant Governor's note of the 19th instant, and will transmit a copy to Mr. Dunn, and Doctor Rolph, without delay.

Front Street, 20th February, 1836.

D

ADDRESS OF THE COMMON COUNCIL OF THE CITY OF TORONTO.

To His Excellency Sir Francis Bond Head, Knight Commander of the Royal Hanoverian Guelphic Order, and of the Prussian Military Order of Merit, Lieutenant Governor of the Province of Upper Canada, &c. &c.

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects the Mayor, Aldermen and Commonalty of the City of Toronto, most respectfully beg leave to state, that at the present most difficult and important era in the history of this Province, when this Council had fondly hoped that the appointment of Your Excellency to the government of this country, with the accession to the Executive Council, appointed for the affairs thereof, of gentlemen of integrity and talent, known to possess liberal constitutional principles, would have secured to its inhabitants that wise, just and liberal policy so imperiously demanded, to strengthen the bonds of union between the mother country and the colony;

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this Council have with extreme regret and surprise witnessed their just anticipation destroyed by the dissolution of the late Executive Council and the appointment of another in their stead composed of gentlemen who, however worthy in their individual private capacity, are incapable from their well known political views of giving satisfaction to the people, and that this Council, as the representatives of the inhabitants of the capital of Upper Canada (from this as well as other causes not necessary to be here explained on account of their general notoriety,) have no confidence whatever in the present Provincial Administration, not deeming them competent to advise with the Representative of our Most Gracious Sovereign upon the peace, welfare and prosperity of the Province.

We therefore most humbly pray Your Excellency to be pleased to dismiss Your present advisers, and call to Your council, gentlemen possessing the public confidence, as the only measure, in the opinion of this Council, calculated to insure the tranquillity of the Province at the present crisis.

HIS EXCELLENCY'S REPLY.

MR. MAYOR AND GENTLEMEN :—The particular interest which I take in the welfare of this Capital, of which I am myself an inhabitant, induces me to reply at some length to the address I have just received from you, in which you state,

1st.—That you have no confidence in what you term “the present *Provincial Administration*,” and

2ndly.—That you beg leave to name for me, other individuals for that station.

With respect to a “*Provincial Administration*,” although no such power exists in this or any other colony of the British Empire, I may remark, that very shortly after the late addition to the Executive Council, I observed that great efforts were making to delude and persuade the public mind that the new Council were entitled to claim the responsibility, power, and patronage of the Lieutenant Governor, and that such an arrangement would be highly advantageous to the people.

Finding that this new theory was rapidly gaining ground, I resolved to offer it no secret opposition, nor in any way to exert my influence to oppose it; but I determined the very first time it should come well within my reach, that I would drag it into day light, in order that it might be openly, fairly and constitutionally discussed.

From several places I subsequently received addresses on the subject, which I did not deem it advisable to notice; but to my astonishment there suddenly appeared from a quarter from which I certainly least expected it, namely from the Executive Council itself, a document (a copy from which had been inscribed in the

Minutes of the Council, signed by all the six Councillors,) openly declaring that what had secretly been promulgated respecting the powers of the Executive Council, was actually the law of the land !

The question being fairly before me, I deliberately opposed it—accepted the resignation of the Six Councillors, and at the request of the Assembly I laid before that House the communication I had received from the Council, with my reply.

The subject was thus formally brought before the public, and having performed this duty, I felt comparatively indifferent as to the result ; for if the power and patronage of this Province which have hitherto been invested in the Lieut. Governor, really belong to his Council, I consider that without reluctance they ought at once to be delivered up and secured to them.

The House of Assembly, however, cannot alter the Constitutional Act of this Province—neither can I ; and as regards popular meetings, I need hardly observe, that if the inhabitants of the whole Province were simultaneously to petition me to alter a single letter of that solemn Act, I have neither power nor inclination to do so.

If it should prove that the practice which has hitherto been pursued is erroneous, I will not for a moment hesitate to acknowledge it ; and in that case, I should feel it my duty at once to recall to my council the six members who have resigned ; but I cannot be blind to the fact, that the Constitutional Act which is open to every body, does not create any Executive Council at all.

The members of the late Council rest their claims very nearly on the following grounds :

1st. That the responsibility they assume, being a popular opinion daily increasing, is consequently the law of the land ; and

2nd. That though the powers they acquire are no where expressed in the Constitutional Act, they were evidently intended to have been inserted.

I conceive that these arguments do not even require to be refuted ; and with respect to what Genl. Simcoe or any other Governor may have asserted, I must also be permitted to assert, that the rights, liberties and property of the inhabitants of this Province, would be insecure indeed, if they rested on any such declarations.

The Constitution of this Province is the sacred charter of the land ; and it is no less my duty, than the interests of its inhabitants that I should firmly maintain it, as I ever will, inviolate.

If that charter constitutes a "Provincial Ministry," it need only be shewn to me, to be secured ; but I deliberately repeat that it contains the creation of no such a power, and in my opinion, were it to be now created, it would be productive of the most vicious effects ; for if the power and patronage of the Crown

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were to be delivered over to a tribunal sworn to secrecy, they would very soon fall into the hands of a few metropolitan families who might possibly promote their own views, to the rejection of the interests of the distant Counties: whereas while these powers continue invested in the individual appointed by His Majesty to be the Lieutenant Governor of this Province, he (being a stranger) can have neither interest nor inducement to abuse them.

No one can be more anxious than I am, that this plain constitutional question should be gravely and calmly discussed, for it will be impossible for me to attempt to correct the grievances of the country, until I can prevail upon the Legislature to follow me cheerfully in the noble object we have in view; and I certainly do feel most deeply, that, for the sake of the people, those who are invested with power ought manfully to determine to lay aside all private feelings—to forgive and forget all political animosity, and to allow His Majesty's wishes, and my instructions, to be promptly executed.

With respect to the want of confidence you express in the Council I have just selected, I will only observe, that in my judgement, they appear to be sensible, steady men of business, of high moral worth; and I cannot but recollect, that one of these gentlemen was, only a few weeks ago, actually the Mayor of your own City, selected by yourselves as being peculiarly entitled to that public confidence which you now declare is denied to him.

With this moral before your minds, you surely cannot but admit, what a political tempest would continually exist—how the interests of the farmer would be blighted, were the power and patronage of this thinly peopled Province to be transferred from His Majesty's Lieutenant Governor into the hands of what you term a "Provincial Ministry" at Toronto.

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ADDRESS FROM A PUBLIC MEETING HELD IN THE CITY HALL.

*To His Excellency Sir Francis Bond Head, K. C. H.
&c. &c. &c.*

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects, the Inhabitants of the City of Toronto, assembled under the authority of the Mayor of the city, beg respectfully to submit to Your Excellency this our address, containing the expression of our sentiments and feelings in reference to the late changes in the Executive Council, and of the opinions which have been expressed by Your Excellency as to the nature of the Constitution of this Province:

That Colonel Simcoe, the first as well as the ablest and most enlightened Lieutenant Governor of this Province, who was a member of the Parliament of Great Britain when the Statute 31st Geo. 3, chap. 31, commonly called the Constitutional Act, was passed, was the bearer of that Act to this colony, and was authorised undoubtedly by His Majesty's Government to declare to his faithful subjects in this Province, the nature of the Constitution, then about to be put into operation for their benefit, and who assured the people of this Province from the Throne, on the opening of the first session of the Provincial Parliament that the said Act had "established the *British Constitution*, and all the forms which secure and maintain it in this distant country," and "that the wisdom and beneficence of our Most Gracious Sovereign, and the British Parliament has been eminently proved, not only in imparting to us the same form of government, but also in securing the benefits of it by the many provisions that guard that memorable Act, so that the blessings of an invaluable Constitution thus protected and amplified, they might hope would be extended to the remotest posterity;" and that the same Governor upon closing that session specially enjoined upon the members of the Legislature from the Throne to explain to the people of the country, "that this Province was singularly blest, not with a mutilated Constitution, but a Constitution which has stood the test of experience, and was the very image and transcript of that of Great Britain."

That it is an essential and inalienable feature of the British Constitution thus assured to us, that the King shall be assisted in all the affairs of Government by the advice of known and responsible Councillors and Officers who possess the confidence of the people, and of the majority of their Representatives; and that our fellow subjects in the United Kingdom would indignantly resent any attempt to deprive them of this part of their Constitution, as an infringement upon their most sacred rights and liberties, and a step taken to degrade them to the condition of slaves.

That the recent appointment by Your Excellency of the Honorable John Rolph, Robert Baldwin and John Henry Dunn as Executive Councillors gave universal gladness and satisfaction throughout the Province, those gentlemen having been long known, beloved and respected for the talents, acquirements and virtues which adorn their characters, the liberal and patriotic principles that they entertain, and the important services which they have respectively rendered to the people of this Province, and that the selection of them by Your Excellency as your advisers disposed His Majesty's subjects to hope that a new and happy era had at length arrived in the history of this Province.

That we have learned with surprise and sorrow that those gentlemen, together with the former members of Your Excel-

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lency's Council, have found themselves under the necessity of resigning their seats, and that Your Excellency appears to us, to have taken offence for no other reason than the respectful expression of an opinion in favor of the Government being conducted on the acknowledged principles of the British Constitution; an opinion supported by unanswerable arguments, and which they were bound by every obligation of honor and duty as faithful Councillors to express to Your Excellency.

That our most sincere respect and gratitude are due to those gentlemen and their late colleagues in Your Excellency's Council, for the noble efforts which they made in the honorable and upright discharge of their duties, to secure to the people of this Province the practical benefit and faithful application of constitutional principles of the highest importance to their liberty and prosperity; and that we are solemnly called upon at such a crisis to declare our firm and unalterable determination to resist every attempt to *mutilate* and deform our Constitution by the denial of those principles, or the refusal of the full benefit and practical operation of them, and that the people of this Province will never, in our humble opinion, be content with a system that is only a mockery of a free and *responsible* Government.

That we feel it our bounden duty to declare to Your Excellency, that the gentlemen whom Your Excellency has called to your Council, since the resignation of your late Council, do not in any degree possess the confidence of the people of Upper Canada.

We further humbly express our disappointment and regret at the remarks which Your Excellency has, by evil and unknown advisers, been induced to animadvert upon the circumstances under which Your Excellency caused your late Council to resign; and that respect which it is equally our duty and inclination to pay to the Representative of our Most Gracious Sovereign, forbids our declaring on this painful occasion any other feeling than that of an earnest hope that the persons, whoever they may be, who have been guilty of such an abuse of Your Excellency's confidence may be forever discarded by Your Excellency.

In conclusion, we beg leave to state to Your Excellency, that as subjects of the British Empire we claim all the rights and privileges of the British Constitution, and as subjects of a British colony possessing the powers of self-government given to it by the Parent State, we claim our right that the Representative of the Crown shall be advised in all our affairs by men known to, and possessing the confidence of the people; and as the true friends of His Majesty's Government, and to the permanency of our connexion with the Parent State we earnestly entreat Your Excellency to regard our opinions and remonstrances (firmly though we hope respectfully expressed) and to adopt mea-

asures to calm the present extraordinary state of public excitement, aggravated by the high hopes created in the public mind by the removal of Sir John Colborne, and the appointment of Your Excellency to the head of the administration.

By order of the Meeting.

(Signed) T. D. MORRISON, Mayor,
Chairman.

JAMES LESSLIE,

Secretary.

TORONTO, March 25th, 1836.

HIS EXCELLENCY'S REPLY.

GENTLEMEN:—Having reason to believe that the meeting from which you are a deputation, was composed principally of the industrious classes, and being persuaded that the liberal principle of the British Government, in whatever climate it may exist, is the welfare and happiness of the people, I shall make it my duty to reply to your address with as much attention as if it had proceeded from either of the branches of the Legislature, although I shall express myself in plainer and more homely language.

1st. I have no wish to deny "that Colonel Simcoe was the first as well as the ablest and most enlightened Governor of this Province—that he was a member of Parliament when the Statute 31st Geo. 3, chap. 31, commonly called the Constitutional Act was passed; and that he was the bearer of that Act to this colony;" but I ask you, can this possibly alter the solemn Act itself? for surely your own plain good sense will tell you, that Colonel Simcoe had no more power, either during his voyage or on his arrival here, to alter the charter committed to his charge, than I had power to alter the Instructions which I lately delivered from His Majesty to both Houses of your Legislature; and so, if Colonel Simcoe, instead of saying that the Constitution of this Province "was the very image and transcript of that of Great Britain," had thought proper to compare it to the arbitrary Governments of Russia or Constantinople, it would in no way have injured your liberties, or have altered one single letter of the written charter of your land.

2nd. I have no wish to deny "that in the British Constitution the King is assisted in all the affairs of Government, by the advice of known and responsible councillors and officers, who possess the confidence of the people," and who form His Majesty's Cabinet; but Colonel Simcoe, who you yourselves state "was authorised undoubtedly by His Majesty's Government to declare to his faithful subjects in this Province the nature of the Constitution," created no such cabinet, nor any cabinet at all

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and from his day, down to the present hour, there has never ex-
isted any ministry in the colony, except the Governor, who is
himself the responsible minister of the Crown.

Supposing it were to be argued that four-fifths of the mem-
bers of your House of Assembly ought immediately to be dis-
missed, because, in proportion to the population of Great Bri-
tain and Ireland, there exist five times as many members here as
in the English House of Commons, would you not think it very
irrational that this noble but thinly-peopled colony should be
made "the exact image and transcript of the British Constitu-
tion merely because Colonel Simcoe happened to use these
words? Would you not immediately appeal to your Constitu-
tional Act on the subject?

Would you deem it just that a young rising Province like
this, should be afflicted with the same expensive machinery re-
quisite for the Government of the mother country, 4000 miles off?

Would you not very fairly argue, that as the whole popula-
tion of this immense country exceeds only by one-third that of the
single parish of St. Mary-le-bonne in London—and as the whole
of its revenue does not equal the private fortune of many an En-
glish commoner, it would be unreasonable to expect that the
people of this Province should be ruined in vainly attempting to
be the "exact image and transcript" of the British Constitution.

But the Constitution which His Britannic Majesty George
the Third granted to this Province ordained no such absurdities;
and you have only to read that Constitution, to see quite clearly
the truth of this assertion.

The yeomen and industrious classes of Upper Canada should
never allow a single letter to be subtracted from, or added to,
this great charter of their liberties; for if once they permit it to
be mutilated, or what may be termed improved, they and their
children become instantly liable to find themselves suddenly de-
prived of their property, and, what is better than all property,
of their freedom and independence.

By this Act, you are of course aware that a House of Assem-
bly, a Legislative Council, and a Lieutenant Governor are ap-
pointed; but it creates no Executive Council: and if people tell
you that it does, read the act, and you will see the contrary.

Now, as regards the House of Assembly, you must know,
that being your Representatives, they are of course answerable
to you for their conduct; and as regards the Lieutenant Gover-
nor, I publicly declare to you, that I am liable to dismissal in
case I should neglect your interests.

But, contrary to the practice which has existed in this or
any other British colony,—contrary to Colonel Simcoe's prac-
tice, or to the practice of any other Lieutenant Governor who
has ever been stationed in this Province,—it has suddenly been
demanded of me that the Executive Council are to be responsi-

ble for my acts; and, because I have refused, at a moment's warning, to surrender that responsibility which I owe to the people,—whose real interests I will never abandon,—I find that every possible political effort is now making to blind the public mind, and to irritate its most violent passions.

But I calmly ask, what can be the secret reason of all this? Is it usual for one person to insist on bearing another person's blame? or for a body of men to insist on receiving the punishment incurred by an individual superior to them in station?—Why, therefore should my Council, whose valuable advice, if it were not to be forced upon me, I should be most anxious to receive, be required to demand from me my responsibility?—What reason can exist for attempting to deprive me of the only consolation which supports any honest man in an arduous duty, namely: the reflection that he is ready to atone for every error he commits, and that he is subject to arraignment if he offends? Why should it be declared that responsibility would be more perfect with my Council than with me? Are they purer from party feelings, or less entangled with their family connections, than I am? How can gentlemen who have sworn to be dumb, be responsible to the yeomanry and people of this rising Province?—How could they possibly undertake to administer this Government, with mouths sealed by an oath which forbids them to disclose, to any one, the valuable advice they may conscientiously impart to me?

The answer to these questions is very short. The political party which demand responsibility from my council know perfectly well that the power and patronage of the crown are attached to it; and it is too evident, that if they could but obtain this marrow, the empty bone of contention—namely: responsibility to the people,—they would soon be too happy to throw away; and from that fatal moment would all those who nobly appreciate liberty, who have property to lose, and who have children to think of, deeply lament, that they had listened to sophistry, had been frightened by clamor, and had deserted the Representative of our Gracious Sovereign to seek British justice from his mute but confidential advisers. This supposition, however, I will not permit to be realized; for never will I surrender the serious responsibility I owe to the people of this Province; and I have that reliance in their honesty—I have lived so intimately with the yeomanry and industrious classes of our revered mother country, that I well know, the more I am assailed by faction, the stronger will be their loyal support,—and that if intimidation be continued, it will soon be made to recoil upon those who shall presume to have recourse to it.

The Grievances of this Province must be corrected—impartial justice must be administered: the People have asked for

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it—their Sovereign has ordained it—I am here to execute his gracious commands—delay will only increase impatience. Those, however, who have long lived upon agitation already, too clearly see their danger; and, with surprising alacrity, they are now taking every possible measure to prevent me from rooting up the tree of abuse, because they have built and feathered their nests in its branches. They asked, however, for the operation, and to amputation they must very shortly submit; for what's worth doing should always be done well."

I have come here for the avowed purpose of reform, but I am not an agitator; and, by command of our Gracious Sovereign, I will maintain the constitutional liberties of his subjects in this Province, and at the same time encourage, to the utmost of my power, internal wealth, agriculture, commerce, peace and tranquillity.

With respect to my late Council, I regret, quite as much as you can do, their resignation; but, before they took the oath of secrecy, (which appears to my judgment to be an oath of non-responsibility to the people,) I addressed to them a note which clearly forewarned them, as follows:—"I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it."

Three weeks after they had joined the Council, they altogether, in a body, disputed this arrangement; and accordingly we parted on a matter of dry law.

No one can deny that my view of the subject agrees with the practice of Colonel Simcoe, and of all the succeeding Governors of this Province down to the day of Sir John Colborne's departure; but that is no proof whatever that the practice has been right,—and, if you would prefer to form your own opinion of the law, read the Constitutional Act.

With respect to my new Council, whose high moral character I cannot but respect, I shall consult them as unreservedly as I had promised to consult those who have just resigned; and, if any competent tribunal shall pronounce that they are responsible for my conduct, no one will be a greater gainer than myself by the decision.

In the meanwhile I shall deal openly and mildly with all parties; and I trust that I can give you no better proof of my own intention to be governed by reason than the explanation I have just offered to yourselves, the citizens and industrious classes who attended the Toronto meeting.

True Copies.

J. JOSEPH.

COPY.

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In the name and on the behalf of His Majesty.

GEORGE P. R.

Instructions to our Right Trusty and Right Entirely Beloved Cousin and Councillor Charles Duke of Richmond, Knight

corrected—im-
have asked for

of the Most Noble Order of the Garter, General of our Forces, Our Captain General and Governor-in-Chief in and over our Province of Upper Canada in America, or in his absence to the Lieutenant Governor or Commander-in-Chief of our said Province for the time being. Given at Our Court at Carleton House the ninth day of May 1818, in the fifty-eighth year of our Reign.

CHARLES DUKE OF RICHMOND, K. G.

INSTRUCTIONS.

1st. With these Our Instructions you will receive Our Commission under Our Great Seal of Our United Kingdom of Great Britain and Ireland, constituting You Our Captain General and Governor-in-Chief in and over Our Provinces of Upper Canada and Lower Canada, bounded as in Our said Commission is particularly expressed in the execution therefore of so much of the Office and Trust We have reposed in You as relates to Upper Canada You are to take upon You the Administration of the Government of the said Province and to do and execute all things belonging to Your Command according to the several Powers and Authorities of Our said Commission under Our Great Seal of Our United Kingdom of Great Britain and Ireland and of the Act passed in the thirty-first year of Our Reign therein recited and of these Our Instructions to You and according to such further Powers and Instructions as You shall at any time hereafter receive under our Signet and Sign Manual, or by Our Order in our Privy Council.

2nd. And you are with all due solemnity before the members of our Executive Council to cause Our said Commission to be read and published, which being done, You shall then take and also administer to each of the Members of Our said Executive Council the several oaths, and subscribe to the Declaration therein required.

3rd. You shall also administer, or cause to be administered, the Oaths mentioned in Our said Commission to all persons except as hereafter mentioned that shall be appointed to hold or exercise any Office, Place or Trust, or Profit in our said Province previous to their entering on the duties of such office; and you shall also cause them to make and subscribe the aforesaid Declaration, but in cases where any such Office, Place of Trust, or Profit in our said Province of Upper Canada shall be conferred on any of Our subjects who may possess the religion of the Church of Rome, you shall so often as any such Person shall or may be admitted into any such Office, Place of Trust or Profit, administer, or cause to be administered to him the Oath prescribed in and by an Act of Parliament passed in the fourteenth year of Our Reign intitled "An Act for making more effectual Provision for the Government of the Province of Quebec in North America," and also the usual Oath for the execution of such Office, Place of Trust or Profit in lieu of all other Tests and Oaths whatsoever.

4th. Whereas we have thought fit that there should be an Executive Council for assisting you or our Lieutenant Governor or Person administering the Government of our said Province of Upper Canada for the time being, we do by these presents nominate and appoint the undermentioned Persons to be of the Executive Council of Our said Province of Upper Canada, viz: William Dummer Powell, Esquire, Our Chief Justice or the Chief Justice of our said

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Province for the time being, Jacob, Lord Bishop of Quebec, James
Baby, Samuel Smith, the Rev. John Strachan, D. D., and William
Claus, Esquire. And whereas by an order passed in the Province of
Quebec the Governor and Council were constituted a Court of Civil
Jurisdiction for hearing and determining Appeals in certain cases
therein specified, and whereas by an Act passed in the thirty-first
year of Our Reign, it is declared that the Governor, Lieutenant Gov-
ernor, or Person administering the Government of the said Province,
together with such Executive Council shall be a Court of Civil Ju-
risdiction within Our said Province for hearing and determining Ap-
peals within the same in the like cases and in the like manner and
subject to such Appeal therefrom as such Appeals might have been
before the passing of the above recited Act heard and determined by
the Governor and Council of Quebec. In order therefore to carry
the said Act into execution, Our Will and Pleasure is, that you do
in all civil cases, on application being made to you for that purpose,
permit and allow Appeals from any of the Courts of Common Law
in Our said Province unto You and the Executive Council of the
said Province of Upper Canada in manner prescribed by the above
mentioned Act, and You are for that purpose to issue a Writ as near-
ly in the accustomed manner before the passing of the above men-
tioned Act in respect of such Appeals as the case will admit, return-
able before yourself and the Executive Council of the said Pro-
vince, who are to proceed to hear and determine such Appeal wherein
such of the Executive Council as shall be at that time Judges of the
Court from whence such Appeal shall be made to You and to Our
said Executive Council as aforesaid, shall not be admitted to vote
upon the said Appeal, but they may nevertheless be present at the
hearing thereof to give the reasons of the judgment given by them
in the causes wherein such Appeal shall be made provided never-
theless, that in all such Appeals the sum or value appealed for do
exceed the sum of three hundred pounds Sterling, and that security
be first duly given by the Appellant to answer such charges as shall
be awarded in case the first sentence be affirmed and if either Party
shall not rest satisfied with the judgment of You and such Executive
Council as aforesaid, Our Will and pleasure is, that they may then
appeal unto us in Our Privy Council, provided the sum or value so
appealed for unto Us do exceed five hundred pounds Sterling, and
that such Appeal be made within fourteen days after sentence, and
good security be given by the Appellant that he will effectually pro-
secute the same and answer the condemnation, as also pay such costs
and damages as shall be awarded by Us, in case the sentence of You
and the Executive Council be affirmed, Provided nevertheless where
the matter in question relates to the taking or demanding any duty
payable to Us, or to any Fee of Office or Annual Rents or other
such like matters or things where the rights in future may be bound.
In all such cases You and the said Executive Council are to admit
an Appeal to Us in our Privy Council though the immediate
sum or value Appealed for be of a less value. And it is our further
Will and Pleasure, that in all cases whereby Your Instructions You
are to admit Appeals unto Us in Our Privy Council execution shall
be suspended until the final determination of such Appeal, unless
good and sufficient security be given by the Appellee to make ample
prostitution of all that the Appellant shall have lost by means of such
decree or judgment, in case upon the determination of such Appeal,

such decree or judgment should be reversed and restitution awarded to the Appellant. You and Our Executive Council are also to admit Appeals unto Us in our Privy Council in all cases of Fines imposed for misdemeanours, provided that the Fine so imposed amount to, or exceed the sum of one hundred pounds Sterling, the Appellant first giving good security that he will effectually prosecute the same and answer the condemnation if the sentence by which the fine was imposed in Your Government shall be confirmed.

5th. And that we may be always informed of the names and characters of persons fit to supply the vacancies which may happen in our said Executive Council, You are in case of any vacancy in Our said Council to transmit to Us through one of Our Principal Secretaries of State the names and characters of such three Persons inhabitants of Our said Province of Upper Canada, whom You may esteem best qualified for fulfilling the Trust of such Executive Councilor.

6th. And in the choice and selection of such Persons proposed to fill such vacancy in Our said Executive Council, as also the Chief Officers of Justice, You are always to take care that they be men of good life, well affected to Our Government and of ability suitable to their employment.

7th. And whereas we are sensible that effectual care ought to be taken to oblige the Members of Our Executive Council to a due attendance, it is Our Will and Pleasure in order to prevent the many inconveniences that may happen for want of a quorum of the Council to transact business as occasion may require, that if any of the Members of Our said Executive Council residing in Our said Province shall hereafter wilfully absent themselves from the Province and continue absent above the space of six months together, without leave from You first obtained under Your Hand and Seal, or shall remain absent for the space of one year without Our leave given them under Our Royal Signature their places in the said Executive Council shall immediately thereupon become void. And We do hereby will and require You that Our Royal Pleasure be signified to the several Members of Our said Executive Council, and that it be entered in the Council Books as a standing Rule.

8th. And to the end that Our said Executive Council may be assisting to You in all affairs relating to Our Service You are to communicate to them such and so many of these Our Instructions wherein their advice is mentioned to be requisite, and likewise all such others from time to time as you shall find convenient for Our Service to be imparted to them.

9th. You are to permit the Members of Our said Executive Council to have and enjoy freedom of debate and vote in all affairs of public concern which may be debated in the said Executive Council.

10th. And whereas by the aforesaid recited Act passed in the thirty-first year of Our Reign it is provided that the Seats of the Members of Our Legislative Council shall become vacant in certain cases mentioned in the said Act. It is our will and pleasure that if any Member of Our said Legislative Council shall at any time leave Our said Province and reside out of the same, you shall report the same to us by the first opportunity, through one of Our Principal Secretaries of State, and you are also in like manner to report whether such Member of the said Council is absent by your permission or by the permission of our Lieutenant Governor or Commander in

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Chief of the said Province for the time being, and you are also in like manner to report, if it shall come to your knowledge that any such Member shall at any time take or have taken the Oath of Allegiance or Obedience to any Foreign Prince or Power, or shall withhold our assent therefrom, or that you be attainted for Treason in any Court of Law within any of Our dominions, that We may take such measures thereupon as We shall think fit, and you are to take special care that the several Provisions of the said Act respecting the several cases in which persons may or may not be entitled to receive writs of summons to the said Legislative Council and to hold their places therein shall be duly executed.

11th. And for the execution of so much of the powers vested in you by Our said Commission and by virtue of the said Act as relates to the declaring that you assent in Our name to Bills passed by the Legislative Council and House of Assembly, or that you withhold our assent therefrom, or that you reserve such Bills for the signification of Our Royal Pleasure thereon. It is Our Will and Pleasure that you do carefully observe the following Rules, Directions, and Instructions, viz :

That the style of enacting all the said Laws, Statutes, and Ordinances be by Us, Our Heirs and Successors, by and with the advice and consent of the Legislative Council and Assembly of Our Province of Upper Canada, constituted and assembled by virtue and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual Provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," and that no bill in any other form shall be assented to by you in Our name. That each different matter be provided for by a different Law, without including in one and the same Act such things as have no proper relation to each other.

That no clause be inserted in any Act or Ordinance which shall be foreign to what the title of it imports and that no perpetual clause be part of any temporary Law.

That no Law or Ordinance whatever be suspended, altered, continued reviewed, or repealed in general words, but that the title and date of such Law or Ordinance shall be particularly mentioned in the enacting part.

That in case any Law or Ordinance respecting private property shall be passed without a saving of the right of Us, Our Heirs and Successors, and of all Persons or Bodies politic or corporate except such as are mentioned in the said Law or Ordinance you shall declare that you withhold Our Assent from the same, and if any such Law or Ordinance shall be passed without such saving you shall in every such case declare that you reserve the same for the signification of Our Royal Pleasure thereon.

That in all Laws or Ordinances for levying Money or imposing Fines, Forfeitures or Penalties express mention be made that the same is granted or reserved to Us, Our Heirs and Successors for the Public uses of the said Province and the support of the Government thereof as by the said Law shall be directed and that a Clause be inserted declaring that the due application of such Money pursuant to the directions of such Law shall be accounted for unto Us through Our Commissioners of our Treasury for the time being in such manner and form as we shall direct.

12th. And whereas we have by our said Commission given you full Power and Authority subject as therein is specified and to these Our Instructions in that behalf to issue Writs of Summons and Election and to call together the Legislative Council and Assembly of Our said Province of Upper Canada and for the purpose of Electing the Members of the Assembly of Our said Province of Upper Canada, have also given you full Power and Authority to issue a Proclamation dividing Our said Province of Upper Canada into Districts, or Counties, or Circles and Towns or Townships, and declaring and appointing the number of Representatives to be chosen by each of such Districts or Counties or Circles and Towns and Townships. Now Our Will and Pleasure is that you shall issue such Proclamation as soon as may be allowing nevertheless a reasonable time between the issuing thereof and the time of issuing the Writs of Summons and Election above mentioned.

13th. That all Laws assented to by you in Our name or reserved for the signification of Our Royal Pleasure thereon shall when transmitted by you be fairly abstracted in the Margins, and accompanied with very full and particular observations upon each of them that is to say whether the same is introductory to a new Law declaratory of a former Law, or does repeal a Law then before in being. And you are also to transmit in the fullest manner the reasons and occasion for proposing such Laws together with fair Copies of the Journals and Minutes of the Proceedings of the said Legislative Council and Assembly, which you are to require from the Clerks or other proper Officers in that behalf, of the said Legislative Council and Assembly.

14th. And whereas, in the said Act it is provided, that in certain cases, Acts passed by the Legislative Council and Assembly of the Province, shall, previous to any signification of Our Assent thereto, be laid before both Houses of Our Parliament of this Kingdom; and Whereas, it is also provided in the said Act, that in certain Cases, Provision may be made by the Acts of the Legislative Council and Assembly of the Province, assented to by Us, Our Heirs and Successors, (thereby reserving the Power of giving such assent to Us, Our Heirs and Successors only) you are to take especial care that in every such Case you are to declare that you reserve such Bills for the signification of Our Pleasure thereon, and you will likewise reserve for such signification every other Bill which you shall consider to be of an extraordinary or unusual nature, or requiring Our especial consideration and Decision thereupon particularly such as may affect the Property, Credit or Dealings of such of Our Subjects as are not usually resident within Our said Province, or whereby Duties shall be laid upon British or Irish Shipping, or upon the Produce or Manufactures of Great Britain or Ireland.

15th. And whereas Laws have been formerly enacted in several of Our Plantations in America for so short a Time that Our Royal Assent or Refusal thereof could not be had before the Time for which such Laws were enacted did expire. You shall not assent in Our name to any Law that shall be enacted for a less time than two years, except in cases of imminent necessity or immediate temporary expediency. And you shall not declare Our Assent to any Law containing Provisions which shall have been disallowed by Us without express leave for that purpose first obtained from Us, upon a full repre-

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sentation by you to be made to Us, through one of Our Principal Sec-
retaries of State of the reasons and necessity of passing such Law.

16th. Whereas we have thought fit by Our Orders in Our Privy
Council to disallow certain Laws passed in some of Our Colonies
and Plantations in America for conferring the privileges of naturaliza-
tion on Persons being Aliens, and for divorcing persons who have
been legally joined together in Holy Marriage; and Whereas Acts
have been passed in others of Our said Colonies to enable Persons
who are Our liege Subjects by Birth or naturalization to hold and
inherit Lands, Tenements and Real Estates, although such Lands,
Tenements and Real Estates had been originally granted to or pur-
chased by Aliens antecedent to naturalization. It is Our Will and
Pleasure that you do not upon any pretence whatsoever give your As-
sent to any Bill or Bills that may hereafter be passed by the Legisla-
tive Council and Assembly of the said Province under Your Govern-
ment for the naturalization of Aliens nor for the divorce of Persons
joined in Holy marriage, nor for establishing a title in any Person to
Lands, Tenements, or real Estates, in Our said Province, originally
granted to or purchased by Aliens antecedent to Naturalization.

17th. You are to give Warrants under your hand for the issuing
of Public Monies for all public services, and we do particularly re-
quest you to take care that regular accounts of all receipts and pay-
ments of Public Monies be duly kept, that the same from time to
time be duly audited by Our Executive Council, and that Copies
thereof, attested by you be transmitted every half year, or oftener if
there should be occasion, to Our Commissioners of Our Treasury,
or to Our High Treasurer for the time being, and Duplicates thereof
by the next conveyance, in which accounts shall be specified every
particular sum raised or disposed of to the end that we may take
such measures as we may deem necessary for the examination of the
said Accounts, and that we may be satisfied of the right and due ap-
plication of the Revenues of Our said Province of Upper Canada,
and with the probability of the increase or diminution of it under
every head and article thereof.

18th. Whereas, by an Act of the Parliament of Great Britain,
passed in the Fourth year of Our Reign, intituled, "An Act to pre-
vent paper Bills of Credit hereafter to be issued in any of His Ma-
jesty's Colonies and Plantations in America from being declared to
be a legal tender in payment of money and to prevent the legal
tender of such Bills as are now subsisting from being pro-
longed beyond the periods limited for calling in and sinking the
same," it is enacted that no Paper Bill or Bills of Credit should be
created or issued by an Act, Order, Resolution or Vote of Assembly
in any of Our Colonies or Plantations in America to be a legal tender
in payment, and that any such Act, Order, Resolution or Vote for
creating or issuing such Paper Bills or Bills of Credit, or for prolonging
the legal tender of any such then subsisting and current in any of
the said Colonies and Plantations should be null and void. And
whereas, by another Act of Our said Parliament, passed in the Thir-
teenth year of Our Reign, intituled, "An Act to explain and amend
the above recited Act passed in the Fourth Year of Our Reign as
aforesaid, it is enacted that any Certificates, Notes, Bills, or Deben-
tures which shall or may be voluntarily accepted by the Creditors of
the Public within any of the Colonies of America, as security for the
payment of what is due and owing to the said Public Creditors, may

be made and enacted by the General Assemblies of the said Colonies respectively to be a Tender to the Public Treasurers in the said Colonies for the discharge of any Duties, charges or Debts whatsoever due to and payable at or in the said Public Treasuries of the said Colonies in virtue of Laws passed within the same, and in no other case whatsoever. It is Our Will and Pleasure that you do in all things conform yourself to the Provisions of the said recited Acts, both with respect to the not assenting to any Bills which may be presented to you for the purpose of issuing or creating Paper Bills, or Bills of Credit to be a legal tender in payment, and the assenting to any Bills, by which such Certificates, Notes, or Debentures which may be voluntarily accepted in payment by the public Creditors shall be made a legal tender to the Treasury for Taxes, Duties, and other payments to the Public Treasury.

19th. You shall not remit any Fines or Forfeitures whatsoever above the sum of Ten Pounds, nor dispose of any Forfeitures whatsoever until upon signifying unto the Commissioners of Our Treasury or Our Right Treasurer for the time being, the nature of the offence and the occasion of such Fines and Forfeitures, with the particular sums or values thereof which you are to do with all speed, you shall have received Our Directions thereon, but you may in the mean time suspend the payment of the said Fines and Forfeitures.

20th. And you are on every occasion to transmit to Us, through One of Our Principal Secretaries of State (with all convenient speed) a particular account of all new Establishments of Jurisdiction Courts, Offices and Officers, Powers, Authorities, Fees, and Privileges granted and settled within Our said Province of Upper Canada, as likewise an account of all expenses (if any) attending the Establishment of the said Courts and Offices.

21st. It is Our further Will and Pleasure that all Commissions to be granted by you to any Person or Persons to be Judge, Justice of the Peace, or other necessary Officer, be granted during pleasure only.

22nd. You are not to suspend any of the members of the said Executive Council, or to suspend or displace any of the Judges, Justices, Sheriffs, or other Officers or Ministers within Our said Province of Upper Canada, without good and sufficient cause; and in case of such suspension or removal you are forthwith to transmit your reasons for the same to one of Our Principal Secretaries of State.

23rd. And whereas frequent complaints have been made of great delays and undue proceedings in the Courts of Justice in several of Our Plantations whereby many of Our Good Subjects have very much suffered, and it being of the greatest importance to Our Service and to the welfare of Our Plantations be every where speedily and duly administered, and that all disorders, delays, and other undue practices in the administration thereof be effectually prevented. We do particularly require you to take especial care that in all Courts where you are authorised to preside, Justice be impartially administered, and that in all other Courts established within Our said Province all Judges and other Persons therein concerned do likewise perform the several duties without delay or partiality.

24th. You are to take care that no Court of Judicature be adjourned but upon good grounds, and also that no Orders of any Court of Judicature be entered or allowed which shall not be first read and approved of by the Justices in open Court, which Rule you

are in like manner to see observed with relation to all proceedings of Our Executive Council of Upper Canada, and that all orders there made be first read and approved in such Council before they are entered upon the Council Books.

25th. You are to take care that all Writs within the said Province of Upper Canada be issued in Our Name.

26th. You shall take care with and by the advice and assistance of Our Executive Council that such Prisons as may at any time be necessary be erected, and that the same or any other already erected be kept in such a condition as may effectually secure the Prisoners which now are or may hereafter be confined in them.

27th. You shall not suffer any Person to execute more Offices than one by Deputy.

28th. You shall not by colour of any Power or Authority hereby or otherwise granted or mentioned to be granted unto you, give, grant, or dispose of any Place or Office within Our said Province, which now is or shall be granted under the Great Seal of this Kingdom, or to which any person is or shall be appointed by Warrant under Our Signet and Sign Manual, any further than that you may upon the vacancy of any such office or place, or upon the suspension of any such Officer by you as aforesaid put in any fit Person to officiate in the interval till you shall have represented the matter unto us thro' One of Our Principal Secretaries of State, which you are to do by the first opportunity, and till the said office or place is disposed of by Us, Our Heirs or Successors under the Great Seal of this Kingdom, or until some person shall be appointed thereunto under Our Signet and Sign Manual, or until Our further directions be given therein. And it is Our express Will and Pleasure that you do give reasonable support to the Patent Officers in the enjoyment of their legal and established Fees, Rights, Privileges and Emoluments, according to the true intent and meaning of their respective Patents.

29th. And whereas several complaints have been made by the Officers of Our Customs in Our Plantations in America that they have frequently been obliged to serve on Juries and personally to appear in Arms whenever the Militia is drawn out, and thereby are much hindered in the Execution of their employments, Our Will and Pleasure is that you take especial care and give the necessary directions that the several Officers of Our Customs be excused and exempted from serving in any Juries, or personally appearing in Arms in the Militia, unless in cases of absolute necessity, or serving any particular Offices which may hinder them in the Execution of their Duties.

30th. And whereas nothing can more effectually tend to the speedy settling of Our said Province of Upper Canada the security of the Property of Our Subjects and the advancement of Our Revenue than the disposal of such Lands as are Our Property upon good and reasonable terms, and the establishing of a regular and proper method of proceeding with respect to the passing of Grants of such Lands. It is Our Will and Pleasure that all and every person or Persons who shall apply for any Grant or Grants of Land shall, previous to their obtaining the same, make it appear that they are in a condition to cultivate and improve the same, and in case you shall, upon a consideration of the circumstances of the person or persons

applying for such Grants, think it advisable to pass the same, you are in such case to cause a Warrant to be drawn up directed to the Surveyor General, or other Officer empowering him or them to make a faithful and exact Survey of the Lands so petitioned for, and to return the said Warrant within Six Months at farthest from the Date thereof, with a Plot or description of the Lands so Surveyed thereunto annexed, and when the Warrant shall be returned by the said Surveyor or other proper Officer the Grant shall be made out in due form, and the terms and conditions required by these Our Instructions be particularly and expressly mentioned therein, and it is Our Will and Pleasure that the said Grants shall be registered within Six Months from the date thereof in the Register's Office and a Docket thereof be also entered in Our Auditors' Office, Copies of all which Entries shall be regularly returned by the proper Officer to Our Commissioners of Our Treasury.

31st. And for the further encouragement of Our Subjects, It is Our Will and Pleasure that the Lands to be granted by you as aforesaid shall be laid out in Townships, and that each inland Township shall as nearly as circumstances will admit consist of Ten Miles Square, and such as shall be situated upon a navigable River or Water, shall have a front of Nine Miles, and be Twelve Miles in depth, and subdivided in such manner as shall be found most advisable for the accommodation of the settlers and for the making the several reservations for the Public uses, and particularly for the Support of the Protestant Clergy, agreeably to the above recited Act, passed in the thirty-first Year of Our Reign.

32nd. And because great inconveniences have heretofore arisen in many of Our Colonies in America from the granting excessive quantities of Land to particular persons, who have never cultivated or settled the same, and have thereby prevented others more industrious from improving such lands, in order therefore to prevent the like inconveniences in future, It is Our Will and Pleasure that you observe the following directions and regulations in all Grants to be made by you as aforesaid, that is to say :

That no Town lot shall be granted to any one person being Master or Mistress of a Family in any township so to be laid out, which shall contain more than one Acre.—That no Park Lot shall be granted to any one person being Master or Mistress of a Family in any Township so to be laid out which shall contain more than Twenty-four Acres.—That no Farm Lot shall be granted to any one person being Master or Mistress of a Family in any Township so to be laid out which shall contain more than Two Hundred Acres.

It is Our Will and Pleasure, and you are hereby allowed and permitted to grant unto every such Person and Persons such further quantity of Land as they may desire, not exceeding One Thousand Acres, over and above what may heretofore have been granted to them, and in all grants of Land to be made by you as aforesaid you are to take care that due regard be had to the quality and comparative value of the different parts of Land comprised within any township, so that each Grantee may have as nearly as may be a proportionate quantity of Lands of such different quality and comparative value as likewise that the breadth of each Tract of Land to be hereafter granted be one third of the length of such Tract, and that the length

of such Tract do not extend along the Banks of any River, but into the Main Land, that thereby the said Grantees may have each a convenient share of what accommodation the River may afford for Navigation or otherwise.

33rd. And as a further accommodation to Our subjects who shall become Settlers as aforesaid, It is Our Will and Pleasure that the said Townships and the respective allotments within the same, together with the lands to be reserved as aforesaid shall be seen and laid out by Our Surveyor General of Lands for the said Province, or some skilful person authorised by him for that purpose, which Surveys, together with the Warrants and Grants, and the respective allotments shall be made out for and delivered to the several Grantees free of any expense or fee whatever, other than such as may be payable to the different Officers according to the Table of Fees established upon Grants of Land made in the said Province.

34th. And in order to prevent any persons disaffected to Us and Our Government from becoming Settlers in Our said Province of Upper Canada, It is Our Will and Pleasure that no Warrant for Surveying Lands be granted by you or the Lieutenant Governor, or person administering the Government for the time being, unless the Person or Persons so applying for the same do at the time of making such application, besides taking the usual Oaths directed by Law, also make and subscribe the following declaration in Your or His presence, or in the presence of such person or persons as shall by you or him be appointed for that purpose, that is to say:—

I, A. B. do promise and declare that I will maintain and defend to the utmost of my power the authority of the King and his Parliament, as the supreme Legislature of this Province.

35th. Whereas the reserving such Bodies of Land within Our Province of Upper Canada, where there are considerable growths of Timber fit for the use of Our Royal Navy is a matter of the utmost importance to Our Service, it is Our Will and Pleasure that no Grants whatever be made of Lands in any District or tract of Our said Province of Upper Canada until Our Surveyor General or his Deputy lawfully appointed, shall have surveyed the same, and marked out as Reservations to Us, Our Heirs and Successors such parts thereof as shall be found to contain any considerable growth of Masting or other Timber fit for the use of Our Royal Navy, and more especially upon the rivers. And you are hereby intrusted to direct Our Surveyor General of Lands in Our said Province from time to time, with al due diligence to complete the Surveys and mark out the Reservations as aforesaid, in the most convenient parts of Our said Province, and you are from time to time to report the number, extent, and situation of such Reservations, and you are farther to direct Our Surveyor General not to certify any plots of ground ordered and surveyed for any person or persons in order that Grants may be made out for the same until it shall appear to him by a certificate under the hand of Our Surveyor General of Woods, or his Deputy, that the land so to be granted is not part of nor included in any District marked out as a Reservation for Us, Our Heirs and Successors as aforesaid, or the purpose hereinbefore mentioned, and in order to prevent any deceit or fraud being committed by the persons applying for lands in this respect, It is Our Will and Pleasure that in

all Grants to be hereafter made for Lands within Our said Province of Upper Canada, the following proviso and exceptions be inserted, that is to say: "And provided also, that no part of the parcel or tract of Land hereby granted to the said _____ and his Heirs, be within any Reservation heretofore made and marked for Us, Our Heirs and Successors by Our Surveyor General of Woods, or his lawful Deputy, in which case this Our Grant for such part of the land hereby given and granted to the said _____ and his heirs forever, as aforesaid, and which shall upon a survey thereof being made be found within any such Reservation, shall be null and void and of none effect, anything to the contrary notwithstanding."

36th. And whereas it is necessary that all Persons who may be desirous of settling in Our said Province should be fully informed of the conditions and terms upon which lands shall be granted within Our said Province of Upper Canada, in the manner prescribed in and by the said Act, passed in the thirty-first Year of Our Reign, you are therefore as soon as possible to cause a publication to be made by Proclamation or otherwise, as you shall in your discretion think most advisable of the said terms and conditions respecting the Granting of Lands, in which Proclamation it may be expedient to add some short description of the natural advantages of the soil and climate and its peculiar convenience for trade and Navigation.

37th. And it is Our further Will and Pleasure that all the foregoing instructions to you, as well as any which you may hereafter receive, relative to the passing Grants of Land in conformity to the said Act, passed in the thirty-first Year of Our Reign, be entered upon record for the information and satisfaction of all Parties whatever that may be concerned therein.

38th. And whereas it hath been represented to Us that many parts of the Province under Your Government are particularly adapted to the growth and culture of hemp and flax, it is therefore Our Will and pleasure that in all Surveys for settlements the Surveyor be directed to report whether there are any, or what quantity of lands contained within such surveys for the production of hemp and flax.

39th. And whereas it has been represented to Us that several parts of Our said Province of Upper Canada have been found to abound with Coals. It is Our Will and Pleasure that in all Grants of Land to be made by you a clause be inserted reserving to Us, Our Heirs and Successors all Coals, and also all Mines of Gold, Silver, Copper, Tin, Iron, and Lead, which shall be discovered upon such Lands.

40th. You shall cause a Survey to be made of all considerable landing places or harbours in Our said Province, in case the same shall not already have been done, and report to Us by one of Our Principal Secretaries of State how far any Fortifications be necessary for the security and advantage of the said Province.

41st. Whereas the establishment of proper regulations on matters of Ecclesiastical concern, is an object of very great importance, it will be your indispensable duty to take care that no arrangements in regard thereto be made, but such as may give full satisfaction to our New Subjects, in every point in which they have a right to any indulgence on that head, always remembering that it is a toleration of

the free exercise of the religion of the Church of Rome only to which they are entitled, but not to the Powers and Privileges of it as an Established Church, that being a preference which only belongs to the Protestant Church of England.

42nd. And upon the principles therefore and to the end that our just supremacy in all matters Ecclesiastical as well as Civil may have its due scope and influence.

It is Our Will and Pleasure, first that all appeals to a correspondence with any foreign Ecclesiastical Jurisdiction of what nature or kind soever, be absolutely forbidden under severe penalties.

Secondly, that no Episcopal or Vicarial power be exercised within our said Province by any person professing the Religion of the Church of Rome, but such only as are indispensably and indisputably necessary to the free exercise of the Romish Religion, and in those cases not without a license and permission from you under the Seal of Our said Province for and during our will and pleasure, and under such limitations and restrictions as may correspond with the spirit and provisions of the Act of the 14th year of our reign "for making more effectual provision for the Government of the Province of Quebec" and no person whatever is to have Holy Orders conferred upon him or have the care of souls without a license for that purpose first had and obtained from you.

Thirdly, that no person professing the Religion of the Church of Rome be allowed to fill any Ecclesiastical benefice, or to have and enjoy any of the rights or profits belonging thereto who is not a Canadian by birth (such only excepted) as are now in possession of any such benefices, and who is not appointed thereto by us, or under our authority, and that all right or claim of right in any other person whatever to nominate, present, or appoint to any vacant benefice other than such as may lay claim to the patronage of Benefices as a Civil Right be absolutely abolished, no person to hold more than one benefice, or at least not more than can reasonably be served by one and the same incumbent.

Fourthly, that no person whatever professing the Religion of the Church of Rome be appointed incumbent of any Parish in which the Majority of the Inhabitants shall solicit the appointment of a Protestant Minister, in which case the incumbent shall be a Protestant, and entitled to all Tythes payable within such Parish, but nevertheless the Roman Catholics may have the use of the Church for the free exercise of their Religion at such time as may not interfere with the Religious worship of the Protestants, and in like manner the Protestant Inhabitants in every Parish where the majority of the Parishioners are Roman Catholics, shall, notwithstanding, have the free use of the Church for the exercise of their Religion at such time as may not interfere with the Religious Worship of the Roman Catholics.

Fifthly, that no incumbent professing the Religion of the Church of Rome, appointed to any Parish, shall be entitled to receive any Tythes for Lands, or Possessions occupied by a Protestant, but such Tythes shall be received by such Persons as you shall appoint, and shall be reserved in the hands of Our Receiver General as aforesaid, for the support of a Protestant Clergy in Our said Province, to be actually resident within the same, and not otherwise, according to

such directions as you shall receive from Us in that behalf, and in like manner all growing Rents and profits of a vacant Benefice shall during such vacancy, be reserved for and applied to the like uses.

Sixthly, That all persons professing the Religion of the Church of Rome, who are already possessed of, or may hereafter be appointed to any Ecclesiastical Benefice, or who may be licensed to exercise any power or authority in respect thereto, do take and subscribe before You in Council, or before such person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament, passed in the 14th Year of Our Reign, entitled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America."

Seventhly, That all Incumbents of Parishes, professing the Romish Religion, not being under the Ecclesiastical Jurisdiction of the Bishop of Quebec, shall hold their respective Benefices during their good behavior, subject however in case of any conviction for Criminal Offence, or upon due proof of seditious attempts to disturb the peace and tranquillity of Our Government, to be deprived or suspended by You.

Eighthly, that such Ecclesiastics as may think fit to enter into the Holy State of Matrimony shall be released from all penalties to which they may have been subjected in such cases by any authority of the See of Rome.

Ninthly, That freedom of the Burial of the Dead in the Churches and Church Yards be allowed indiscriminately to every Christian persuasion.

Tenthly, that the Royal family be prayed for in all Churches and places of Public Worship, in such manner and form as is used in this Kingdom, and that Our Arms and Insignia be put up not only in all such Churches and places of Holy Worship, but also in all Courts of Justice, and that the Arms of France be taken down in any such Church or Court where they may at present remain.

43rd. You are to permit the liberty of Conscience and the free exercise of all such modes of Religious Worship as are not prohibited by Law to all persons who may inhabit and frequent the Province of Upper Canada, provided they be contented with a quiet and peaceable enjoyment of the same without giving offence or scandal to the Government.

44th. It is our Will and Pleasure to reserve to you the granting of Licenses for Marriage, Letters of Administration, and Probates of Wills, as heretofore exercised by You and Your Predecessors, and also to reserve to you and all others to whom it may lawfully belong the Patronage and Right of Presentation to Benefices, but It is Our Will and pleasure that the person so presented shall be instituted to the Bishop or his Commissary, duly authorised by him.

45th. You are to take especial care that God Almighty be devoutly and duly served throughout Your Government—that the Lord's Day be duly kept, and the Services and Prayers appointed and according to the Book of Common Prayer be publicly and solemnly performed throughout the Year.

46th. You are to take care that the Churches which are or may be hereafter erected in Our said Province of Upper Canada be well and orderly kept.

47th. You shall recommend to the Legislative Council and General Assembly of the Province of Upper Canada, to settle the limits of Parishes in such manner as may be deemed most convenient.

48th. You are to use Your best endeavour that each Minister be constituted one of the vestry in his respective Parish, and that no vestry be held without him except in case of sickness, or that after notice given by the vestry he omit to come.

49th. It is Our Will and Pleasure that you recommend to the Legislative Council and Assembly of Our said Province of Upper Canada to make due provision for the erecting and maintaining of Schools where Youth may be educated in competent learning, and in knowledge of the principles of the Christian Religion.

50th. And it is Our further Will and Pleasure that no person shall be allowed to keep a School in the Province of Upper Canada without Your license first had and obtained. In granting of which you are to pay the most particular attention to the Morals and qualifications of persons applying for the same, and in all cases where the School has been instituted or appointed for the education of Members of the Church of England, or where it is intended that the Schoolmaster should be a Member of the Church of England, you are not to grant such Licenses except to Persons who shall first have obtained from the Bishop of Quebec or one of his Commissioners a Certificate of their being properly qualified for that purpose.

51st. And it is Our further Will and Pleasure, that in order to suppress every species of vice, profaneness and immorality, You do forthwith cause all Laws made against Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's day, Swearing and Drunkenness, to be strictly put in execution in every part of the Province of Upper Canada, and that for this purpose You do direct that the Constables and Church Wardens of the several Parishes do make presentment upon Oath of any of the vices before mentioned to the Justices of the Peace in their Session, or to any other of the temporal Courts, and You are earnestly to recommend to the Legislative Council and Assembly to provide effectual Laws for the restraint and punishment of all such of the aforementioned vices, against which no Laws are as yet provided, or in cases where the Laws already made are found to be insufficient, and in order to discountenance vice and promote the practice of virtue to the utmost of Your power, We do hereby strictly command and enjoin You to appoint no person to be a Justice of the Peace, or to any trust or employment whose notorious ill life or conversation may occasion scandal.

52nd. You are not to present any Protestant Minister to any Ecclesiastical Benefice within Our said Province by virtue of the said Act, passed in the thirty-first Year of Our Reign, and of Our Commission to You without a proper Certificate from the Bishop of Quebec or his Commissary of his being conformable to the doctrine and discipline of the Church of England.

53rd. And you are to take especial care that the Table of Marriages established by the Canons of the Church of England be hung up in all places of Public Worship, according to the Rites of the Church of England.

54th. It is Our Intention that the Peltry Trade of the Interior Country shall be free and open to Our Subjects, Inhabitants of any of Our Colonies who shall, pursuant to what was directed by Our Royal Proclamation of 1763 obtain Trading Licenses from the Governor of any of Our said Colonies under penalties to observe such regulations as shall be made by Our Legislature of Our Province of Upper Canada for that purpose.—These regulations therefore when established must be made public throughout all Our American Possessions, and they must have for their object the giving every possible facility to that Trade which the nature of it will admit, and which may be consistent with just and fair dealing towards the Native Indians with whom it is carried on.—The fixing stated times and places for carrying on the Trade, and adjusting modes of settling Tariffs, of the price of Goods and Furs, and above all the restraining the Sale of spirituous liquors to the Indians will be the most profitable and effectual means of answering the ends proposed.

55th. And whereas it is expedient for Our Service that we should from time to time be informed of the state of the Trade and Fisheries, as well as of the Population of the said Province of Upper Canada, It is Our Will and Pleasure that you do transmit to Us through one of Our Principal Secretaries of State, and to Our Committee of Our Privy Council for Trade and Foreign Plantations for their information yearly and every year a full and particular account of the state of the Fur and Peltry Trade, the nature and extent of the several Fisheries carried on by Our Subjects or others either on the Lakes or Rivers of the said Province—the state of the cultivation, particularly specifying the quantity of Grain, Hemp and Flax produced, and of any other important branch of Trade which may in Your opinion be undertaken and advantageously carried on by Our Subjects—the number of Inhabitants, distinguishing them under the different heads of Men, Women, and Children, inserting in such account the number of persons born, christened, and buried, and any extraordinary influx or emigration from Our said Province, specifying at the same time the number of Slaves and the number of Our Subjects capable of bearing Arms in the Militia. The number and Tonnage of Shipping and Crafts employed upon the Lakes and Rivers in or contiguous to the Province of Upper Canada—together with any information on these or any other points of the like nature which may be proper to be communicated to us.

56th. And whereas you will receive from our Commissioners for executing the office of High Admiral of our United Kingdom of Great Britain and Ireland and of the Plantations, a Commission constituting you Vice Admiral of our said Province of Upper Canada, you are required and directed carefully to put in execution the several powers thereby granted to you.

57th. Whereas it is absolutely necessary that we be exactly informed of the state of defence of all our Plantations in America as well in relation to the stores of war, that are in each Plantation as to the Forts and Fortifications there and what more may be necessary to be built for the defence and security of the same, you are from time to time to transmit an account thereof with relation to our said Province of Upper Canada, in the most particular manner and you are therein to express the present state of Arms, Ammunition and other stores of war belonging to the said Province either in any public Magazines

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or in the hands of private persons together with a state of all places either already fortified or that you may judge necessary to be fortified for the security of our said Province, and you are to transmit the said accounts to us, by one of our principal Secretaries of State and also Duplicates to our Master General or principal Officers of our Ordnance, which accounts are to express the particulars of Ordnance, Carriages, balls and powder and all other sorts of arms and Ammunition now in our public Stores, and so, from time to time, of what shall be sent to you or bought with the public money and to specify the time of the disposal and the occasion thereof and other like accounts, half yearly in the same manner.

58th. And in case of distress in any other of our Plantations you shall upon application of the respective Governors to you assist them with what aid the condition and safety of our said Province under your Government can spare.

59th. If any things shall happen which may be of advantage or security to our Province under your Government, which is not herein or by your Commission provided for we do hereby allow unto you with the advice and consent of our said Executive Council to take order for the present therein provided nevertheless that what shall be done be not repugnant to our Commission or Instructions and to the said Acts passed in the fourteenth and thirty first years of our reign, giving unto us, by one of our principal Secretaries of State speedy notice thereof, that you may receive our ratification if we shall approve the same:—Provided always that you do not by colour of any power or authority hereby given you commence or declare war without our knowledge and particular command therein except it be for the purpose of preventing or repelling hostilities or unavoidable emergencies when the consent of our said Executive Council shall be had, and speedy notice given thereof to us by one of our principal Secretaries of State.

60th And whereas great prejudice may happen to our service and to the security of our said Province by your absence or the absence of the Lieutenant Governor for the time being you shall not upon any pretence whatsoever come to Europe without having first obtained leave for so doing from us, under our signet and sign Manual or by our order in our Privy Council.

61st And whereas we have thought fit by our Commission to direct, that in case of your death or absence from our said province, and in case there be at that time, no person Commissioned or appointed by us to be our Lieutenant Governor or appointed by us to administer the Government within the Province in the event of the death or absence of you and of our Lieutenant Governor of the said Province the Senior member of the Executive Council who shall be at the time of your death or absence residing within our said Province of Upper Canada (subject to such other nomination and appointment by you under the Great Seal of our said Province as in our said Commission is in that behalf mentioned) shall take upon him the administration of the Government, and execute our said Commission and Instructions and the several powers and authorities therein contained in the manner hereby directed. It is nevertheless our express will and pleasure, that in such case the person so administering the Government shall forbear to assent to any Acts, but what are immediately necessary for the welfare of our said Province without our particular orders for that purpose

and that he shall not take upon him to dissolve the Assembly then in being nor to remove or suspend any of the Members of our said Executive Council nor any Judges, Justices of the Peace or other Officers, Civil or Military, without the advice and consent of the majority of the said Executive Council, and he is by the first opportunity to transmit to us by one of our principal Secretaries of State the reasons of such alterations signed by him and the Council and our will and pleasure is that the above Instructions with respect to such senior Councillor shall also be equally observed by and binding upon such other Executive Councillor as may be nominated and appointed by you under the Great Seal of our said Province by virtue of our said Commission in that behalf.

62nd. And whereas by our different Commissions we have appointed you to be our Governor and Commander in Chief of our Provinces of Upper and Lower Canada, our Province of Nova Scotia our Islands of Prince Edward and Cape Breton as well as our Province of New Brunswick, and it is our intention that the Lt. Governors commanding in our said Provinces of Upper Canada, New Brunswick, and Nova Scotia, and the Islands of Prince Edward, and Cape Breton should have and enjoy the full salaries, Perquisites and Emoluments granted to them and arising from their respective Governments in as full and ample a manner as if the said Governments were under distinct Governors in Chief. It is therefore our will and pleasure that you shall not at any time or times when you shall be resident and Commanding in Chief in either of our said Provinces of Upper Canada, Nova Scotia, or New Brunswick or the Islands of Prince Edward and Cape Breton, have or receive any part of the said Salaries, Perquisites, or Emoluments, but that the same shall continue to be paid and satisfied to the Lieut. Governors of our said Provinces and Islands respectively in the like manner as they usually are during your absence therefrom.

63rd. And you are upon all occasions to send to us by one of our principal Secretaries of State a particular account of all your proceedings and of the condition of affairs within your Government.

(A true Copy.)

J. JOSEPH.

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Copy of the Oath taken by every Member of the Executive Council.

"You do swear, that so far forth, as cunning and discretion sufficeth, you will justly, truly and evenly counsel and advise the King and his Representative in the government of this Province, in all matters to be communed, treated, and demeaned in the Executive Council, or by you as the King's Counsellor, without partiality or exception of persons, not leaving or eschewing so to do, for affection, love, need, doubt or dread of any person or persons.

"You shall keep secret the King's council, and all that shall be communed, by way of counsel, in the same, and shall not discover it by word or writing, or in any otherwise, to any person

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out of the same council, or to any of the same council, if it touch him, or he be the party thereof. You shall not gift meed good, or promise of good, by any man, or by promise of any other person, accept, or take, for any promotion, favoring, letting, or hindering any matter, or thing to be treated, or done in the said Council.

"You shall with all your might and power, help and strengthen the King's said Council, for the good of the King and this Province, and for the peace, rest and tranquillity of the same.

"You shall withstand any person, or persons, of whatever condition, estate, or degree, that should attempt, or intend the contrary, and generally, you shall observe, keep, and do all that a good and true Councillor ought to do unto his Sovereign Lord, or His Representative in this Province.

JOHN BEIKIE,

Clerk Executive Council.

II

Address to His Majesty on the subject of the Legislative Council.

To the King's Most Excellent Majesty.

MOST GRACIOUS SOVEREIGN

We, Your Majesty's most dutiful and loyal subjects the Commons of Upper Canada, in Provincial Parliament assembled, humbly represent, that we have applied ourselves with the greatest diligence during the present session of the Provincial Parliament to various subjects of great interest to our constituents; and although our proceedings have been unavoidably interrupted, to a degree altogether unprecedented, by the trial of controverted elections, and although many of the members of this House have laboured under the disadvantage of having been without Parliamentary experience; yet the necessary measures on the subjects, to which we have alluded, have been brought to a satisfactory conclusion and completed as far as depended on this House, and have been sent to the Legislative Council. It is with no ordinary mortification and regret however, that we find our exertions during a most laborious session rendered unavailing in respect to most of these measures, by the rejection of them by the Legislative Council, among such as have shared this fate are, Bills, to protect the agricultural interests of this Province from a ruinous foreign competition—to provide for the just and equal distribution of the property of persons dying intestate—to secure an impartial trial by jury—and to take from the Sheriffs who hold their offices during pleasure, the power which they now possess of packing Juries—to relieve an excellent and meritorious class of your subjects from burdens and penalties which are imposed by the

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Militia laws of this Province, and which are oppressive on them, and which in time of peace are altogether unnecessary—to improve the system of our common and district schools, and to increase the public funds for their support—to amend the charter of King's College, in conformity with Your Majesty's gracious recommendations, and with the wishes which have at different times been strongly expressed to Your Majesty by your faithful subjects in this Province, so as to put that institution into operation on just and liberal principles—to provide for the sale of the Clergy Reserves and the application of the monies arising therefrom to objects of common benefit and great utility to Your Majesty's subjects in this Province, in accordance with Your Majesty's gracious invitations, and with the well known and often expressed wishes of Your Majesty's subjects—to promote the peace, freedom, and independence of elections of members of Parliament, by adopting the mode of voting by ballot—to grant one hundred pounds per annum for five years to the Grantham and Bath Academies, institutions of education established by the voluntary contribution of the people, and on liberal principles. All these measures, and others which we will not trouble Your Majesty with enumerating, have been rejected by the Legislative Council without amendment, and the labours of this House, during a session which we think we may justly declare has been distinguished for unprecedented diligence and application to public business, almost entirely baffled and rendered useless by the course pursued by the Legislative Council. If there were any reason to hope that these difficulties could be obviated or materially diminished in future we should not trouble Your Majesty; but the experience of years convinces us, that on many subjects of great and general interest, there is such a disagreement of opinion between the Legislative Council, as now constituted, and the representatives of the people, as to bring us to the conclusion, which indeed the Legislative Council itself has expressed in relation to one of the most deeply interesting of these subjects, namely.—That the Legislature of this Province cannot concur in any measure that will be satisfactory to Your Majesty's subjects in this Province. We are aware that Your Majesty has been officially informed by His Excellency Sir John Colborne, that “composed as the Legislative Council is, at present, the Province has a right to complain of the great influence of the Executive Government in it,—that it consists of seventeen members exclusive of the Bishop of Quebec; that of these, from accidental causes, not more than fifteen ever attend to their Legislative duties, that thus out of the members generally present, six are of the Executive Council, and four hold offices under the Government; and that His Excellency had therefore intimated his intention of recom-

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mending to Your Majesty to increase the Legislative Council," and it was no doubt with a desire to remedy this evil, equally felt by the people and His Excellency, that Your Majesty has since added to their number. But it is our duty to assure Your Majesty that this change has not abated the evil of which we have such serious causes to complain, while it has on the contrary produced that further division, of responsibility among its members which lessens the consciousness of individual accountability without establishing any community of feeling or sentiments of respect between them and the people. We do not wish to advert to this unpleasant and mortifying condition of our public affairs in language that shall be disrespectful or offensive to the Legislative Council; nor do we presume to prescribe to Your Majesty what expedient should be adopted to afford relief in the premises to Your Majesty's dutiful and loyal subjects in this Province, who, we are confident, desire that Your Majesty's attention should be called to it, and that we should humbly leave it to Your Majesty's wisdom to apply a suitable remedy.

In connexion with this subject we feel bound to represent to Your Majesty that it is the earnest desire of Your Majesty's faithful subjects, that Your Majesty's Government in this Province should be conducted by the advice of those who should be actually and practically responsible for their proceedings, and who would, as a consequence, be likely to recommend and favor such public measures as may be most desired by Your Majesty's subjects, and in their opinion most conducive to their interests. We behold Your Majesty in the administration of the affairs of the great Empire, which Providence has committed to Your Majesty's hands, graciously consulting the wishes of your faithful people, as expressed by their representatives, in the choice of responsible advisers to manage, under Your Majesty, the affairs of the Government, and we have been accustomed to regard it as an essential and invaluable feature of the glorious constitution of our Mother Country. The same principles we wish to see applied in the practice of our Colonial Government; until that is done we cannot expect that the administration will give satisfaction to Your Majesty's subjects, or that there will be any real and permanent harmony between the Government and the representatives of the people. It is true that we might withhold the annual grant for the support of the Government as a mark of our dissatisfaction with this state of things, and as a means of procuring redress, but being anxious to evince our forbearance, and desire to avoid, as long as possible, contention and difficulty, as well as to shew our confidence in Your Majesty's paternal regard for your faithful people of this Province and gracious attention to their constitutional rights; and being reluctant to resort to a measure which we are aware

must greatly embarrass the Government, until all other constitutional means of seeking redress have been tried and proved unavailing, we have preferred thus to appeal to Your Majesty for Your Majesty's gracious and effectual interference in our behalf; and have, notwithstanding our just dissatisfaction with the existing state of things, and notwithstanding the pecuniary distress which prevails in the Province, granted, for the present year, the necessary supplies for the support of the Government, in the confident hope that effectual steps will immediately be taken for the removal of these obstacles to the peace, welfare, and good government of the Province. When it is considered that the Ministers, who, sometimes in rapid succession, fill the Colonial Department under Your Majesty are strangers to our Province, and too distantly situated to acquire, through channels often contradictory and interested, a true and correct knowledge of the wants, wishes, and genius of Your Majesty's Canadian people, the practical need of local responsibility becomes more apparent and imperious.

(Signed) MARSHALL S. BIDWELL,
Commons House of Assembly, } *Speaker.*
 15th April, 1835. }

On passing the above address, the yeas and nays were as follows:

YEAS—MESSIEURS.		
Alway,	McIntosh,	Shaver,
Bruce,	Mackenzie,	Shibley,
Chisholm,	McMicking,	Smith,
Duncombe, <i>Oxford</i> ,	Moore,	Thorburn,
Duncombe, <i>Norfolk</i> ,	Morrison;	Waters,
Durand,	Parke,	Wells,
Gibson,	Perry,	Wilson,
Gilchrist,	Roblin,	Yager—26.
Lount,	Rymal,	
NAYS—MESSIEURS,		
Brown,	McLean,	Robinson,
Caldwell,	Macnab,	Rykert,
McCrae,	Merritt,	Sol. General,
M'Donell, <i>Glengarry</i> ,	Morris,	Walsh,
McDonell, <i>Northumb.</i>	Richardson,	Wilkinson—15.

I

To the King's most Excellent Majesty.

MOST GRACIOUS SOVEREIGN!

We your Majesty's most dutiful and loyal subjects, the Commons House of Assembly of Upper Canada, in Provincial Parliament assembled, in full assurance of Your Ma-

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jefty's earnest desire to promote the welfare of your people, beg leave, humbly to address ourselves to Your Majesty, upon a matter of the deepest interest to your faithful subjects in this Province.

We learn with extreme apprehension and regret, that at the instance of the Lords Commissioners of Your Majesty's treasury Your Majesty has been advised to entertain the intention of disallowing two acts of the Legislature of this Colony, which were passed more than two years ago, the one for increasing the capital Stock of the Bank of Upper Canada, and the other for incorporating a second Banking Association in this Province, under the name of *The Commercial Bank of the Midland District*. We humbly represent, that although the disallowance of these acts may appear to be authorized by the letter of the Statute of the British Parliament, passed in the 31st year of the reign of Your Majesty's Royal Father, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign entitled "An Act for making more effectual provision for the government of the Province of Quebec, in North America, and to make further provision for the government of the said province" yet, it is contrary to its spirit and meaning, and of the principles of a free government. We believe that this provision was intended to remedy any evil which might be occasioned by the Royal Assent being given in the Colony, to a Provincial Act that should be found incompatible with the rights and interests of other portions of the Empire, but we cannot think it was intended to give the power of interference with our internal affairs; against such an interference we respectfully, but plainly and solemnly protest, as inconsistent with those sacred constitutional principles which are essential to a free government; since it is manifest, that if Your Majesty's Ministers, at a distance of more than four thousand miles, and not at all controllable by or accountable to Your Majesty's subjects here, and possessing necessarily a slight and imperfect knowledge of the circumstances of this country, the wants, and habits and feelings of the inhabitants, and the mode of transacting business among us can dictate a different course in relation to measures affecting ourselves only, from that which the people, by their representatives, and with the concurrence of the other branches of the Provincial Legislature have chosen, we are reduced to a state of mere dependence upon the will and pleasure of a Ministry that are irresponsible to us, and beyond the reach and operation of the public opinion of the Province, and no one can rely upon our Provincial laws, although they may be constitutionally and deliberately formed but the most unhappy uncertainty and want of confidence will prevail and extend their disastrous influence over all our business transactions.

We respectfully claim the same right in behalf of Your Majesty's subjects in this Province to be consulted in the making of laws for their peace, welfare, and good government, which our fellow subjects in Great Britain enjoy, in respect to the laws to which their obedience is required; and although from the necessity of the case, power must be granted to the head of the Empire of preventing Colonial laws being adopted and enforced, which are incompatible with treaties between Your Majesty's government and foreign states, or with the just rights of any other of Your Majesty's Colonies, yet, with these exceptions, we humbly submit, that no laws ought to be, or rightfully can be dictated to or imposed upon the people of this Province, to which they do not freely give their consent, through the constitutional medium of representatives chosen by, and accountable to themselves.

The force of our humble and dutiful remonstrance against the principle of an interference of Your Majesty's Ministers with our internal affairs, we are not willing to diminish, by insisting upon the inconveniencies and evils likely to follow from the exercise of the power, which the letter of the British Statute before quoted, gives to Your Majesty to disallow the Provincial Acts which we have mentioned, but we cannot refrain from declaring our painful and settled conviction, that the disallowance of these acts after they have been for a long time in operation, so that the most frequent and ordinary, as well as the most extensive and important transactions of business in the Province depend upon their continued existence, would be attended with confusion and distress beyond description, without any benefit to the Province and without any advantage whatever to any portion of Your Majesty's dominions. We therefore respectfully and humbly pray that Your Majesty, taking these matters into your favorable consideration will be graciously pleased not to disallow these provincial acts, and not to permit Your Majesty's Ministers to interfere with our internal affairs, but to leave the same entirely to the discretion and control of the Legislature of this Province.

We beg to renew our assurances of entire devotion to Your Majesty's person and government.

ARCHIDALD McLEAN,

Commons House of Assembly } *Speaker.*
3d. March 1834.

YEAS—MESSIEURS.

Berczy,	Cook,	Jarvis,	Randall,
Bidwell,	Crooks,	Lewis,	Robinson,
Boulton,	Duncombe,	McDonald, A.	Samson,
Buell,	Elliott,	Macdonald, D	Shaver,
Burwell,	Fraser, A.	Macnab,	Vankoughnett,
Campbell,	Fraser, D.	Merritt,	Willson, J.
Chisholm,	Hornor,	Morris,	Wilson, W.—31.
Clark,	Howard,	Perry,	

NAY—Ketchum.

K

To His Excellency Sir Francis Bond Head, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Prussian Military Order of Merit, Lieutenant Governor of the Province of Upper Canada, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY.

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Speaker.

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Robinson,
Samson,
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Wilson, W.—31.

We, his Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, beg leave to request, that your Excellency will cause to be laid before this House, with as little delay as possible, an entire copy of what is generally termed "the King's Instructions" to the Governors of Upper and Lower Canada; and also copies of any other instructions not heretofore laid before this House, touching the duties or responsibilities of the Executive Council of this Province; as also any instructions from His Majesty's Government touching the administering the Government of this Province by any Executive Councillor, in the event of the death or removal from the Province of the Governor, Lieutenant Governor or person administering the Government, and also copies of any bond or agreement between your Excellency and any of your present Executive Council, or between any two or more of the said Council, by which it is stipulated in what manner the Government shall be administered, or who shall administer the Government of this Province in case of the above named occurrence.

Commons House of Assembly, }
23d March, 1836.

MARSHALL S. BIDWELL,
Speaker.

HIS EXCELLENCY'S REPLY.

GENTLEMEN :—I herewith transmit as much of the information desired by the House as I possess.

I have entered into no bond or agreement of any sort with my present Executive Council and I do not possess, nor does there exist in Council any document of such a nature between two or more of the said Council.

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*Committee Room, House of Assembly, }
Monday, 28th March 1836.*

ROBT. T. BALDWIN SULLIVAN, Esq. called in and interrogat.

PRESENT:

MESSRS. PERRY, Chairman,
DUNCOMBE, | ROBLIN,
MORRISON. | NORTON.

Q. 1.—Are you senior member and presiding councillor of Executive Council?

A. 1.—Yes.

Q. 2.—Is there any written agreement existing between yourself and any of the other members of the Executive Council, by which it is stipulated on your part in what way the Government should be administered in the event of the death or removal from the Province of the Lieutenant Governor?

A. 2.—There is no agreement in existence by which it is stipulated how the Government of the Province shall be administered in the events mentioned in the question. At the time the Council were about to be sworn in, I expressed a wish that it might be understood that, in either of the events mentioned, it was my intention to resign my place as Executive Councillor; as it was not my desire, in any event, to fill the situation of administrator of the Government.—At my request this intention was expressed in writing and I signed it.

Q. 3.—Is the instrument you mention, under seal, or witnessed?

A. 3.—It is neither under seal or witnessed.

Q. 4.—Into whose hands did you deliver the document?

A. 4.—Into the hands of the Hon. W. Allan.

Q. 5.—Did any other person know of the existence of the document?

A. 5.—Yes. It was not intended that my intention should be secret; His Excellency the Lieut. Governor was present when it was read and delivered to Mr. Allan.

Q. 6.—Did His Excellency the Lieut. Governor write the document, or was it written by His Excellency's order?

A. 6.—I proposed that my intention should be expressed in writing, and I wished that the writing should be drawn up by some person other than myself; upon which His Excellency being present, was kind enough to draw it up.

Q. 7.—Was the writing intended to be legally binding upon you?

A. 7.—Certainly not.

Q. 8.—What was the object or intention of the paper in question, if it was not intended to be legally binding?

A. 8.—It was intended for my own satisfaction, that it might not be said that I had it in view to fill the situation of administrator of the Government.

Q. 9.—Do you think you could constitutionally resign, in case of either of the above events, and give place to another who could administer the Government?

A. 9.—I could transmit my resignation to His Majesty's Government, and decline taking upon myself the office of administrator of the Government. I think it is the constitutional right of any individual to decline taking office upon himself, and as to giving place to another, that is not the act of the person declining office, but of the law.

Q. 10.—Do you not think, that in either of the above events taking place, you would be the administrator of the Government, without being appointed in any way?

A. 10.—The senior Executive Councillor would, upon taking the oaths of office, be invested with the administration of the Government, without any further appointment.

Q. 11.—Do you think, that upon your resignation, as above stated, the administration of the Government could be assumed by any other member of the Council?

A. 11.—I think it could; either upon my resignation, or upon my refusal to take the oath of office.

Committee Room,
11th April, 1836. }

HON. AUGUSTUS BALDWIN, *called in and examined.*

Q. 1.—Are you one of the present Executive Council? A. 1.—Yes.

Q. 2.—Have you any knowledge of a paper signed by Mr. Sullivan, in relation to the administration of the government in the event of the death, or absence from the Province, of the Lieut. Governor? and were you present when such paper was executed?

A. 2.—I was present when a paper was signed by Mr. Sullivan, for the purpose of Mr. Allan's becoming senior Councillor in the event alluded to.

Q. 3.—At whose suggestion was the paper drawn up and signed?

A. 3.—At Mr. Elmsley's.

Q. 4.—Into whose hands was the paper after execution delivered?

A. 4.—I think it was into Mr. Allan's hands.

Q. 5.—Who drew it up?

A. 5.—Sir Francis Head drew it up.

Q. 6.—What was the understood purpose of the paper?

A. 6.—That the administration might not devolve upon Mr. Sullivan, in case of either of the above events.

Q. 7.—What objection was there to Mr. Sullivan's administering the government thus referred to?

A. 7.—I know of none other than that Mr. Allan had preferable claims from his age and long standing in society. Mr. Sullivan made no objections when the thing was suggested, but immediately said he would acquiesce.

Q. 8.—Are the Committee to understand that the agreement or paper alluded to, was drawn up at the Government House?

A. 8.—No. It was drawn up in the Executive Council Chamber—We went there to meet the Governor before sworn into office.

M

*To His Excellency, Sir Francis Bond Head, Knight,
Commander of the Royal Hanoverian Guelphic
Order, Knight of the Prussian Military Order of
Merit, Lieutenant Governor of the Province of
Upper Canada, &c. &c. &c.*

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada, in Provincial Parliament assembled, humbly beg leave to inform your Excellency, that this House, considering the appointment of a responsible Executive Council to advise your Excellency on the affairs of the Province, to be one of the most happy and wise features in the constitution, and essential to the form of our Government, and one of the

strongest securities for a just and equitable administration, and eminently calculated to ensure the full enjoyment of our civil and religious rights and privileges; has lately learned with no small degree of surprise and anxiety, that the Executive Council, so recently formed for the purpose above stated (as we presume) consisting of six members, did, on Saturday the 12th instant, unanimously tender to your Excellency their resignations; and that your Excellency was pleased to accept the same; and humbly to request your Excellency to inform this House without delay whether such are the facts, and also to communicate to this House full information relative to the cause of disagreement between your Excellency and your said late Executive Council, as far as lies in your Excellency's power to make known, as also to furnish this House with copies of all communications between your Excellency and your said late Council, or any of them, on the subject of such disagreement, and subsequent tender of resignation.

MARSHALL S. BIDWELL,
Speaker.

Commons House of Assembly, }
14th March, 1836.

HIS EXCELLENCY'S REPLY.

GENTLEMEN:—Nothing can appear more reasonable to my mind, than the surprise and anxiety which the House of Assembly express to me, at the intelligence they have received of the sudden resignation of the six members of the Executive Council, for with both these feelings I was myself deeply impressed, when firmly relying on the advice, assistance, and cordial co-operation of my Council, I unexpectedly received from them the embarrassing document which, with my reply thereto, I now, at the request of the House of Assembly, willingly present to you.

With every desire to consult my Council, I was preparing for their consideration, important remedial measures which I conceived it would be advisable to adopt, and had they but afforded me those few moments for reflection, which from my sudden arrival among you, I fancied I might fairly have claimed as my due, the question which so unnecessarily they have agitated, would have proved practically to be useless.

Had they chosen to have verbally submitted to me in Council, that the responsibility, and consequently the power and patronage of the Lieutenant Governor, ought henceforward to be transferred from him to them; had they even in the usual form of a written petition, recommended to my attention as a new theory, that the Council instead of the Governor, was to be responsible to the people, I should have raised no objection whatever to the proceeding, however in opinion I might have opposed

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it, but, when they simultaneously declared, not that such *ought to be*, but that such actually WAS the law of the land, and concluded their statement, by praying that a Council sworn in secrecy to assist me, might be permitted, in case I disapproved of their opinion, to communicate with the public, I felt it my duty, calmly, and with due courtesy to inform them, that they could not retain such principles, together my confidence, and to this opinion I continue steadfastly to adhere.

I feel confident that the House of Assembly will be sensible, that the power entrusted to me by our Gracious Sovereign, is a subject of painful anxiety, that from the patronage of this Province I can derive no advantage, and that I can have no object in retaining undivided responsibility, except that which proceeds from a just desire to be constitutionally answerable to His Majesty, in case I should neglect the interests of His subjects in this Province.

With these sentiments I transmit to the House of Assembly the documents they have requested, feeling confident that I can give them no surer proof of my desire to preserve *their* privileges inviolate, than by proving to them that I am equally determined to maintain the rights and prerogatives of *the crown*, one of the most prominent of which is, that which I have just assumed, of naming those Councillors in whom I conscientiously believe I can confide.

For *their* acts I deliberately declare myself to be responsible but they are not responsible for mine, and cannot be, because being sworn to silence, they are deprived by this fact, as well as by the constitution, of all power to defend themselves.

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*To His Excellency Sir Francis Bond Head, Knight
Commander of the Royal Hanoverian Guelphic
Order, Knight of the Prussian Military Order
of Merit, Lieutenant Governor of the Province of
Upper Canada, &c. &c. &c.*

MAY IT PLEASE YOUR EXCELLENCY,

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada, in Provincial Parliament assembled, humbly beg leave to inform Your Excellency, that we have with deep regret learned that your Excellency has been induced to cause the late Executive Council to tender their resignations to seats in the Council, under circumstances which still enabled your Excellency to declare, that your estimation of their talents and integrity, as well as your personal regard for them, re-

maintained unchanged; and that under the present excited state of public feeling in this colony, occasioned by the recent proceedings between your Excellency and the late Executive Council, and the appointment of a new Council (as appears by the Gazette Extraordinary of Monday the 14th March inst.) composed of Robert B. Sullivan, John Elmsley, Augustus Baldwin, and William Allan, Esquires, this House feel it to be a duty they owe, alike to His Most Gracious Majesty, and to the people of this colony, whose representatives they are, to avail themselves of the first opportunity to declare at once to Your Excellency the entire want of confidence of this House in the last mentioned appointments, and deep regret, that Your Excellency consented to accept the tender of resignation of the late Council, and humbly request your Excellency to take immediate steps to remove the present Council from such their situation.

MARSHALL S. BIDWELL,

Commons House of Assembly, }
24th March, 1836.

Speaker.

HIS EXCELLENCY'S REPLY.

GENTLEMEN:

In reply to your address, I assure you I very sincerely regret that the House of Assembly should entertain a want of confidence in the Council I appointed on the 14th instant, as I faithfully declare, that under the circumstances in which I was placed, I made every exertion to select gentlemen that I thought would be most acceptable to the House and to the people.

I can assure the House, that no one lamented more than I did, the resignation of the late Council, three of the members of which, namely, Messrs. Dunn, Baldwin and Rolph, I had myself especially selected.

With respect to the request "that I should take immediate steps to remove the present Council from such their situation," I might say, that I had hoped the House would have refrained from any such decided expression of its opinion, on the subject, until it had received the report of the committee to whom the subject was referred, and for whom the Government Office is now occupied in furnishing the documentary evidence they desire, but I am unwilling to discuss that question.

With respect to the "present excited state of public feeling in this colony occasioned by the recent proceedings" I feel guiltless of being its cause, inasmuch as to the House of Assembly, as well as to people of all classes who have addressed me, on the subject, I have done every thing in my power to assure them

of my desire that the question should be calmly settled, according to the spirit of the Constitution, and consequently according to the interests of the people.

I can assure the House, that far from entertaining any determination to maintain my opinion, merely because I have uttered it, I should be, at this moment, happy to abandon it, if the duty I owed to my Sovereign, and to the people, could permit me, my mind invites rather than repels conviction, and hoping that the House will, on a subject which must surely occupy the attention of the whole country, meet me with a desire to be governed by reason and truth, I will concisely once again, submit to it my view of the case.

From the time of General Simcoe to the departure of Sir John Colborne, the practice of every Lieutenant Governor of this Province has been, to consider their Executive Councillors as advisers, sworn not to respond, or in other words not to be responsible to the people.

On my arrival here, finding this had been the practice, I also pursued it, but on preparing to add three popular members to the Council, one of them, Mr. R. Baldwin, with the sincerity which forms his character, tells me he thinks my Council, in spite of their oath, *should* respond to the people.

To this project I refuse to accede, a long argument ensues—and at last I write to Mr. R. Baldwin a note of which the following is an extract:

"I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it."

After receiving this distinct statement of my intention *not* to alter the old practice, Mr. R. Baldwin sends a copy of the same to Dr. Rolph, and to Mr. Dunn, and they knowing my sentiments all three join my council.

After sitting in the council three weeks Mr. Baldwin's conscientious opinion again appears, convinces the other members, old as well as new, and the subject in a most formal manner is officially brought before me, with a request that if I disapprove of the opinion, the council may be allowed to address the people. On referring to the Constitutional Act, I am unable to comprehend their reasoning, and we consequently part on the same good terms on which we met. I retaining my unaltered opinion, while at least four of the council have (since my arrival) changed theirs.

The whole correspondence I forward to the House of Assembly, with an earnest desire that, regardless of my opinion, the question may be fairly discussed. In the station I hold, I form one branch out of three, of the Legislature, and I claim for myself, freedom of thought, as firmly, as I wish that the other two branches should retain the same privilege.

If I should see myself in the wrong, I will at once acknowledge my error, but if I should feel it my duty to maintain my opinion, the House must know that there exists a constitutional tribunal competent to award its decision and to that tribunal I am ever ready most respectfully to bow.

To appeal to the people is unconstitutional as well as unwise, to appeal to their passions is wrong—but on the good sense of the House of Assembly I have ever shown a disposition to rely, and to their good sense I still confidently appeal.

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Part 6

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Woodhouse,

APPENDIX.

P

UPPER CANADA.
SCHEDULE of PATENTS for LANDS, constituting Endowments to the Church of England in this Province, that have been completed.

No.	Name of the Minister.	Name of the Parsonage and Situation.	Land forming the Endowment.		No. of Acres.
			LOT.	CONCESSION.	
1	The Hon. and Ven. John Strachan, D. D.	City of Toronto,.....	6, 9, 22 17	2 } 3 }	800
2	Rev. C. Mathews,.....	York, E. Y. S.,.....	14	2 } 3 }	200
3	Rev. T. Phillips, D. D.,.....	Mimico in Etobicoke,.....	West part 3 Part 14 1-4, 15, 27 28 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	2 } 3 }	205
4	Rev. A. N. Bethune,.....	Cobourg,.....	17	1 } 2 }	400
5	Rev. W. Harris,.....	Perth,.....	4	1 } 2 }	400
6	Rev. R. F. Groat,.....	Grimsbv,.....	11, 13 } 14 } 15 } 16 } 17 }	1 } 2 }	400
7	Rev. R. H. D. Olier,.....	Peterborough,.....	40 15, 16 4 Town 3 1 } 4 1 } 5 1 } 6 1 } 7 1 } 8 1 } 9 1 } 10 1 }	1 } 2 }	about 420
8	Rev. F. Evans,.....	Woodhouse,.....		3 } 4 }	402

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17	Beckwith,.....	17	1	Beckwith,.....	400
			2		

APPENDIX.

9	Rev. John Anderson,.....	Waterloo, (Bertie,).....	6 & 7	5 & 6	Bertie,.....	400
10	Rev. William Betteridge,...	Woodstock, (Blandford,...	2	1	Oxford West,.....	400
11	Rev. John Miller,.....	Ancaster,.....	16	5	Oxford East,.....	400
12	Rev. H. Patton,.....	Kempville, (Johnstown dist ^y)	39, 40	5	Ancaster,.....	400
13	Rev. S. Armour,.....	Cavan,.....	15, 16	1	Oxford, (Johnstown dist ^y),	450
14	Rev. G. Mortimer,.....	Thornhill, (Home district),..	16	6		
15	Rev. W. Macaulay,.....	Picton, (Prince Edward dist ^y) N.E. part,	17	4	Cavan,.....	400
16	Rev. R. Blakey,.....	Prescott,.....	10	10	Vaughan,.....	105
17	Rev. W. H. Gunning,.....	Elizabeth Town,.....	19, 20	4	Bilk D. Sophiasburgh,.....	400
18	Rev. T. Mack,.....	Wellington Sq., (Nelson),..	6	2	Augusta,.....	450
19	Rev. J. Coghlan,.....	Port Hope,.....	10	5	Elizabeth Town,.....	400
20	Rev. B. Cronyn,.....	London (Township),.....	Part 9	4	Flamboro' East,.....	400
21	Rev. B. Cronyn,.....	London (Town),.....	Part 15	1	Hope,.....	36
			Part 16	4	Hope,.....	400
				8	London, }	375
				3	" }	45
					London (Township),.....	400

Part of the Town of London on which the Church of England has a stake.

APPENDIX.

32 Rev. R. Rolph,.....	Amherstburgh,.....	80, 81 24, 25	Malton,.....	400
33 Rev. Job Deacon,.....	Adolphustown,.....	6, 7, 8 N. of 3d st. 6, 7, 8 S. of 4th st. 72, 88	Adolphustown (Twp) do. do. do.	164
34 Rev. W. Leeming,.....	Chippawa,.....	89, 106	Stamford,.....	400
35 Rev. A. Palmer,.....	Guelph,.....	C. Div. A. Reserve lot between C. & River Street 14, 16 Div. A. S. of part of St. George's Rest 1/2 3 Broken 3	Guelph (Township) " (TOWN)	86 326
36 No Minister yet appointed,...	Thorold,.....	100, 121	Puslinch,.....	400
37 Do.	Louth,.....	11, 12	Thorold,.....	400
38 Do.	Fredericksburgh,.....	9, 10, 11	Louth,.....	300
39 Do.	Bath, (Midland district),...	1, 12, 13 1/2, 14	Fredericksburgh,.....	250
40 Do.	Williamsburgh,.....	18, 19	Ernest Town,.....	400
41 Do.	Richmond, (Bathurst dis ^{ty})	17, 24	Williamsburgh,.....	400
42 Do.	Clarke,.....	20, 27	Goulbourn, }	400
43 Do.	Darlington,.....	25, 31	Fitzroy, }	400
44 Do.	Town of Barrie, (Home dis ^{ty})	19	Clarke, given by S. S. Wilmet, Esq.,	15
.....		10	Darlington,.....	400
.....		10	Barrie,.....	
.....		14	Unisfl,.....	420

Secretary and Registrar Office, Toronto, 5th Feb. 1856.

D. CAMERON, Secy & Registrar

The following Rectories have been Endowed since the receipt of the foregoing Statement.

No.	Name of the Minister.	Name of the Parsonage and Situation	Land forming the Endowment.		No. of Acres.
			LOT.	CONCESSION.	
45	Rev. John Gamble Geddes,	Hamilton, (Gore district.)	6	13	400
46	Rev. John Grief,	Ameliasburgh,	2	14	400
74	Rev. J. G. Beek Lindsay,	Williamsburgh,	96, 102	Williamsburgh,	374
48	Rev. Edw'd J. Boswell,	Carleton Place,	Part of the centre Common in 1st and 2nd Concessions of the centre Common, given to the Rev. J. G. Beek Lindsay, in 1840, & all Com. Lot 19	Williamsburgh, Matilda, do	163
49	Rev. Mark Burnham,	St. Thomas,	26	2	400
50	Rev. A. H. Burwell,	Bytown,	2	7	400
51	Rev. James McGrath,	Toronto,	9	1	400
52	Rev. James Padfield,	March,	17, 18	Southwold (Township.)	400
53	Rev. Robert Lugger,	Brantford,	23	1	about
54	Rev. Richard Hood,	Delaware,	29	4	400
			2, 32	Gloucester on the Ottawa,	400
			3	Chinacousy, East Huron	400
			9	romario Street,	400
			3	Nepean on the Rideau,	400
			8	Buford,	400
			16	Carradoc,	435
32	Rev. R. Rolph,	Amherstburgh,	80, 81	Malden,	400
33	Rev. Job Deacon,	Adolphustown,	24, 25	Adolphustown (Twp)	164
34	Rev. W. Leeming,	Chippawa,	6, 7, 8	do.	400
			6, 7, 8	do.	400
			72, 88	do.	400
			89, 106	Stamford,	400

35 In 1st Range South of the Long Wood Road, 16

APPENDIX.

55 Rev. Wm. Johnston,	Sandwich,	about 400
56 Parish Church,	Chatham,	about 100

RETURN of PROPERTY surrendered by certain Clergymen of the Church of England, and others, shewing the value of said property, with the lands granted in lieu thereof, intended as endowment.

Names.	Property Surrendered.	Value. £ s. d.	Received in Lieu.			TOTAL No. of Acres.
			LOT.	CONCESSION	TOWNSHIP.	
Rev. James Coghill,	Part of Lot No. 8 in the 11 th Con. of Hope, 36 acres with messuage or dwelling house.	1060 6 3	27	2	Hope,	200 acres.
.....			27	8	"	200 acres.
.....			2	9	Cavan,	200 acres.
.....			19	5	"	100 acres.
.....			16	5	Emily,	100 acres.
.....			16	6	Seymour,	150 acres.
.....			2	5	"	70 acres.
Rev. Geo. Mortimer,	N. 13 27 th W. 5 th Young St. in the 1 st Con. of the 1 st Ward, 100 acres.	750 0 0	14	3	Puslinch,	336 acres.
.....			16	3	"	336 acres.
.....			30	1	Innisfil,	200 acres.
.....			22	12	"	200 acres.
.....			27	6	"	200 acres.
.....			18	7	"	200 acres.
.....			12	8	Esra,	800 acres.
.....			20	8	"	800 acres.
.....			20	8	"	800 acres.

Names.	Property Surrendered.	Value. £ s. d.	Received in Lieu.			TOTAL No. of Acres.
			LOT.	CONCESSION.	TOWNSHIP.	
Rev. Benj. Cronyn,.....	Part 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 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400	Tilbury West.....	{	about 2½ m. E. of Dover (river and road) and Dover Dock.
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-100	Nicholson (Township). . .	{	between Isle River and Lower River.
	Chatham.....	{	
	Sandwich.....	{	
	Rev. Wm. Johnston.....	{	
	Parish Church.....	{	

R

Government House, }
4th April, 1836. }

SIR :

I have laid your letter of the 2d instant before the Lieutenant Governor, and have the honor to forward to you by His Excellency's command, the documents therein applied for.

I think it right to add, for the information of the committee, that a Rejoinder to the Lieutenant Governor's answer to the Address of the Citizens of Toronto, was left at Government House in a sealed cover and returned unread to Mr. George Ridout, who had brought up and read to His Excellency the Address. That gentleman however disclaimed all participation in the Rejoinder, and forwarded it to Mr. Jesse Ketchum, one of the Subscribers.

I have the honor to be,

Sir,

Your most obedient humble servant,

Peter Perry Esq: M.P.P.

J. JOSEPH.

Chairman, &c.

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REJOINDER.

MAY IT PLEASE YOUR EXCELLENCY.

We thank your Excellency for replying to our Address "principally from the industrious classes of the City." with as much attention as if it had proceeded from either branches of the Legislature, and we are deeply sensible, in receiving Your Excellency's reply, of Your Excellency's great condescension, in endeavouring to express yourself in plainer and more homely language, presumed by Your Excellency to be thereby brought down to the lower level of our plainer and more homely understandings. But we beg leave, in justification of those classes, to assure your Excellency that any comparison which may have passed in your Excellency's mind between them, and the more unfortunate and less favored, in the parishes of the Parent State, is by no means founded in truth. The industrious classes of this city have, for many years, been seriously impressed with the duty and importance of acquiring knowledge, for the general diffusion of which, they have by their own efforts, and at their own expense, (with the aid of generous and patriotic friends) so far successfully labored, as to be able to appreciate good writing and fair reasoning.

We desire respectfully to inform your Excellency, in the plain and homely language of industrious men, that any supposed necessity for this great condescension of your Excellency, could not have existed, in any degree, had not past administrations sadly neglected our claims to the blessings of general education. Lest your Excellency should doubt our sufficient apprehension of the matter (tho' we have practically felt and suffered from the evil,) we, humbly, refer your Excellency to the language of our honest and honored representatives, at the opening of the present session of our Parliament:—"We have also been anxious, in past years, to make the means of education general and easily available

House, }
1, 1836. }

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but it has only lately become known to the legislature, that a bountiful provision in lands was made by the Crown about 40 years ago, though since deteriorated, by a recent secret unfavorable exchange for inferior lands. The University of King's College was grounded on Royal Charter, sought for and granted in 1826, upon principles, so exclusive and sectarian, as to render it, deservedly, unacceptable to the great body of the people, for whose benefit it was, professedly, intended; and although the most reasonable modifications were suggested by a series of resolutions in 1829, yet it is now, for the first time, that your Excellency has been enabled to announce, from his Majesty's government, any specific proposition respecting it. Nor ought we to fail to notice, that large appropriations have been made out of the University Fund, not to the district and town-ship schools, undeservedly neglected, but to sustain Upper Canada College in this City, in which the sons of all the wealthiest families are educated, and which ought, therefore, to be supported, without so questionable an encroachment on public funds."

To this statement we can add, the untiring efforts of our representatives for the sale of the Clergy Reserves and the appropriation of their proceeds to the purposes of general education, have hitherto proved unavailing,—and although a philosophical apparatus purchased out of the taxes gathered from the people, in the year 1800, has, ever since, been unused, mouldering and decaying in a garret of the Hospital, yet when the industrious classes, after cleaning and repairing it, humbly solicited his late Excellency, Sir John Colborne, for the use of it, in their institute, it was peremptorily refused.

We, therefore, humbly pray your Excellency, under these mortifying and humiliating circumstances to accept the above painful facts, and extracts from the records of our Parliament, as an apology for any alleged necessity for your Excellency's gracious condescension, in using plainer and more homely language, for the level of our understandings.

But it is because we have been thus mal-treated, neglected and despised in our education and interests under the system of government which has, heretofore, prevailed, that we are now driven to insist upon a change which cannot be for the worse. In the further language of our Commons' House of Assembly, we can aver that "*the uniform experience of nearly half a century has forced the conviction, confirmed by the history of nations, that no richness of soil, or salubrity of climate. no wealth in public lands, or industry and economy among a deserving people, can insure their peace, welfare and prosperity without the possession of those vital institutions which will yield cheap, honest and responsible governments.*"

Now, your Excellency is pleased to answer us, on this occasion, by declaring, that the system of government which has prevailed from the time of Simcoe, is the best for us, although it has, by its vices, reduced us to so deplorable a condition of grievances, that even your Excellency recognizes it, this day, in the following just and sententious language to us;—

"*The Grievances of this Province must be corrected—impartial justice must be administered—the people have asked for it—their Sovereign has ordained it—I am here to execute his gracious commands, delay will only increase impatience.*"—Thus is the exigency of our affairs frankly admitted by your Excellency, in both the Civil and Judicial Departments; and surely it is the province of wisdom, not merely to relieve the present exigency but to remove the causes which have produced it, in the past, & will, if suffered to continue, re-produce it in the future; for the like

causes will ever produce the like effects. However much, therefore, we might commend the intention of Your Excellency to see that "the grievances of this province" are redressed, and "impartial justice administered," we are determined, by means of institutions better organized & directed, to prevent the recurrence of such wrongs; because it is wiser to prevent evil, than to hazard the correction of it, after it has arisen, or has perhaps, become inveterate.

Your Excellency is pleased to say,—"I am here to execute" &c. But your Excellency's predecessors throughout the history of this country have made similar professions yielding however, nothing but bitter disappointment. The issue of the administration of a Gore, a Maitland and a Colborne has been equally disastrous; each, in its commencement, holding forth expectations as flattering as those from your Excellency; but each, finally, aggravating our need for "*grievances to be redressed, and impartial justice to be administered.*" But the very fact, that your Excellency has begun, like your predecessors, is a reason for apprehending the same result; for it would be offensive to your Excellency to assume that they were less wise, impartial and honorable than any who may ever succeed them. The hopes of amelioration from each successive Governor have been uniformly delusive; and candor obliges us to assure your Excellency, that, even in this early period of your government, our condition has become more deplorable than ever, and the very nature and stability of our institutions involved in alarming uncertainty.

While our condition has been thus growing worse, under a succession of new Governors from England, they having been responsible to the Minister in Downing-street. With our plain and homely understandings, we cannot comprehend how a responsibility to Downing-Street, having failed of any good, with all your predecessors, should be all availing in your present Government; for it is the same responsibility in nature and degree,—it is regulated by the same instructions,—it is rendered to the same distant government, 4,000 miles off, and guarded by such a system of secret despatches, like a system of espionage, as to keep in utter darkness the very guilt, the disclosure of which could, alone, consummate real and practical responsibility.

Dalhousie and Aylmer, in Lower Canada, and Gore, Maitland, and Colborne in Upper Canada, have, severally, misgoverned their respective Provinces. The two former have been impeached by the people, thro' their representatives, and their very crimes, instead of meeting punishment; have raised them to higher honors. And altho' the three latter have severally retired from our country, after misconducting our affairs, under a nominal responsibility to Downing-street, till they had endangered an imperious necessity "for the correction of our grievances and the impartial administration of justice," yet in every case, they have been promoted higher, in direct proportion to the complaints of the people, without any redress for their wrongs, or, even, censure of their oppressions. We do not mean, in our plain and homely statement, to be discourteous by declaring our unalterable conviction, that a nominal responsibility to Downing-street, which has failed of any good with the above gentlemen of high pretensions to honor, character & station, cannot have any magic operation in your Excellency's administration, which, shod' it end, as it has, unhappily, begun, might make us drink the cup of national misgovernment to the very dregs without (as experience proves) redress on our part, or retribution on yours. "Facts

are stubborn things." It is a mockery to invite us to rest our future hopes on an ineffectual, merely nominal responsibility, that has proved a broken reed, which, it would be folly, ever again to rest upon.

Your Excellency has been pleased solemnly and publicly to declare, that being determined to hold an irresponsible, or more strictly speaking, an acceptable Executive Council, you hold yourself responsible for their acts, as well as your own; and considering the sort of council you have about you, we cannot foresee the magnitude to which your Excellency's responsibility may extend. On your Excellency's account, therefore, as well as our own, we do humbly and heartily desire to see you surrounded by confidential servants, not likely to involve your Excellency or dissatisfy the country. We do not, however, understand, how the council can be called "*non-responsible*," when your Excellency voluntarily places yourself as a substitute, answerable for their misdeeds to the Minister at Downing-street. But who can avail himself of this responsibility, in order to seek any redress? Can it be reasonably required, that one of a community "*whose whole revenue does not equal the private fortune of many an English commoner*," shall carry his complaint 4,000 off, transmit the evidence, rebut any unjust defence, fee lawyers and agents, in a long, tedious, protracted litigation in Downing-street, worse than a suit in Chancery, where, before the matter can be investigated, one Minister succeeds another so rapidly as to defy continuous inquiry.

This responsibility to Downing-street has never yet saved a single martyr to Executive displeasure. Robert Gourlay still lives in the public sympathy, ruined in his fortune, and overwhelmed in his mind, by official injustice and persecution; and the late Captain Matthews, a faithful servant of the public, broken down in spirit, narrowly escaped being another victim. The learned Mr. Justice Willis, struggled, in vain, to vindicate himself and the wounded justice of the country; and the ashes of Francis Collins and Robert Randal lie entombed in a country, in whose service, they suffered heart-rending persecution and accelerated death. And even, your Excellency has disclosed a secret despatch to the Minister, in Downing street, (the very alleged tribunal for justice,) containing most libellous matter against Wm. Lyon Mackenzie, Esq. M. P. P.—a gentleman known, chiefly, for his untiring services to his adopted and grateful country. We will not wait for the immolation of any others of our public men, sacrificed to a nominal responsibility, which we blush to have so long endured for the ruin of so many of his Majesty's dutiful and loyal subjects.

It is easy to say when wrong is done by the Executive Council of the Province, to any individual or individuals,—the Governor is responsible for them to the Minister at Downing Street; but for all practicable ends, it might as well be said,—at our *antipodes*. Your Excellency asks us, with reference to your late Council,—“Is it usual for one person to insist on bearing another person's blame!”—It seems, may it please your Excellency, to have been usual to do so, for you insist upon being answerable for the acts of your Council, against their will. But, inasmuch, as it appears to your Excellency, as well as to our plain and simple minds, unreasonable for one man to insist on bearing “another person's blame,” we the more earnestly insist that the Executive Council should bear their own blame, and not saddle it upon your Excellency, however graciously disposed your Excellency may be to assume it.

Your Excellency is pleased to say, that,—“the political party which

"demands responsibility for my Council, know perfectly well, that the "power and patronage of the Crown are attached to it, and it is too evident, that if they could but obtain this marrow, the empty bone of contention namely, responsibility to the people they would soon be too "happy to throw away." Respecting these strictures of your Excellency on the purity of their motives (which we deem most patriotic and honorable,) we forbear to offer any remark. "*Charity thinketh no evil.*" But confining our views to what can be gathered from the representations of your late Council, we had rather that the power and patronage of the Crown were exercised by Your Excellency, after receiving the conscientious advice of your sworn advisers, known and acceptable to the people, than by your Excellency's unadvised and arbitrary pleasure; and we think the case rendered even worse, by the interference of a minister 4000 miles off, too distant from the scene of government, and too unacquainted with our complicated localities, to form a judgment, upon which he ought to decree, or with which the people interested ought to be satisfied. What your Excellency is pleased to call the "*marrow of the bone*," is constitutionally intended to nourish, enrich and benefit the "*industrious classes*," and the whole community; and your Excellency's candor, will, no doubt, pardon our reluctance wholly to confide (without the advice of your council) to your Excellency as "a stranger lately arrived among us, ignorant even of the political differences of the parent state and avowedly unacquainted with the wants and condition of this Province."

We beg leave to assure Your Excellency, that the "*bone*" to which Your Excellency alludes, has been in the keeping of successive Governors responsible to the minister in Downing Street; and at one time it abounded with "*marrow*," and was, even, the nucleus for much solid and valuable nutriment, all intended to form a source of national wealth to be improved, husbanded and applied for our peace, welfare and good government. It is with profound, and we greatly fear with unavailing regret, we inform your Excellency, that while subject to the above custody and responsibility, the "*bone*" had been pecked so bare, as to leave little besides the "*marrow*" behind.

Under these circumstances we hope your Excellency will commend the "*industrious classes*," and others for so far learning wisdom from woful experience, as no longer to confide their best present and future interests, their civil and religious liberties, and all that endears a man to his country or to the world, to a succession of Governors, nominally responsible at Downing-street, to a succession of ever-changing Ministers. It is unreasonable to expect it,—we should betray our country to consent to it.

We cannot altogether agree with your Excellency that "the only consolation which should support an honest man, in an arduous duty" is the reflection that he is ready to atone for every error he commits, and that he is subject to arraignment if he offends." The highway-man and the pirate might and often have pleaded the same; have, even, been ready to make atonement by restitution, and after "arraignment" expiated their crimes, according to law. But a Statesman, a Governor, or a King, is presumed to be influenced by higher motives and by more exalted principles. The discharge of, even, an arduous duty cannot, and ought not, to be satisfactory to us, if performed in an unconstitutional way. In some countries the end gained, however valuable, might be so tainted by the means, as to make it

treason. We desire, not only to be governed well, but to be governed constitutionally; at the very least, according to the present charter of our liberties. The fear of personal liability to "atonement" or "arraignment" is a very subordinate protection against the abuse of power, when the complaint is made against a person, entrenched in authority, and armed with patronage; whose very breath confers influence and office, or takes them away,—whose liability is to the very Minister, who is his patron, and is naturally disposed to view, even, his aberrations with a favorable and excusing eye. On that account, among others, we desire, in our government, some higher security than a disposition to atone, or a liability to an arraignment, in its nature and circumstances, almost, impracticable and, almost always, unsuccessful.

It is on this account, may it please your Excellency, we desire to see every Governor surrounded by confidential advisers; who, from their local knowledge, can supply with sworn advice, as the surest means of preventing error or the humiliating necessity of "atonement" or "arraignment" for it. According to Holy Writ "in a multitude of counsellors there is safety;" it is, therefore, natural for us, rather to wish to see the management of our affairs, by your Excellency, with the aid of an acceptable Council, than by your Excellency alone.—Your Excellency must take advice, upon assuming a new government, in a country, in which you are a stranger; and it has been, to us, a source of painful mortification and disappointment, to find, that Your Excellency was consulting irresponsible individuals, neither possessing, nor entitled to political confidence, even to the humiliating exclusion of your sworn advisers, provided by law and selected by yourself. Hence, it is, that there has, scarcely, been a single act of your administration, satisfactory to the community, your Excellency, perhaps, intended to serve.

It is against ourselves and our friends engaged in the common cause of constitutional government, that your Excellency seems to direct the charge of preventing your "rooting up the tree of abuse, because they have built and feathered their nests in its branches." In this "tree," many, indeed, have "built and feathered their nests"; but, heretofore, reformers have never been allowed, even, to perch upon its branches, repose in its shade, or partake of its fruit. The ultra Tories, who have, unhappily, held your Excellency's ear and confidence, have enjoyed a complete monopoly; and it is an historical fact, that our Governors, among the rest, have "built and feathered their nests," and, then, carried their accumulated wealth, with themselves, out of the country. We trust Your Excellency, will feel on this subject, how unjust it is that a community (as Your Excellency observes) whose public revenues do not exceed the income of many a commoner in England, should be called upon to pay for the administration of even, an irresponsible government, a sum almost equal to that received by the President of the United States, with a transcendent wealth and power that put our comparative condition to shame.

We are surprised at the information Your Excellency gives us, that the Executive Council of the Province is "*sworn to be dumb*"; for we always thought they were sworn to advise the King and his Representative, upon our affairs. Supposing Your Excellency were so far to unseal their mouths, as freely to receive their advice, we see no difficulty in its being given secretly, yet responsibly. In England Mi-

isters give their advice, under an oath of secrecy, & are still responsible. There can be therefore, no greater inconsistency in such a relation subsisting between Your Excellency and Your Council. Actions often indicate more strikingly than words; and although your Councillors cannot reveal what they say, the whole country can see what is done. We care not how dumb they are out of the Council, if their mouths are not sealed in it, and the Province is allowed to feel and enjoy the manifest fruits of their counsel, without knowing what it was. The Council should be responsible for giving good advice, while Your Excellency would retain enough of responsibility by deciding upon it. We should not the better esteem a Judge who refused to listen to an argument before he gave a judgment; or a jury who sealed their ears against the charge of a judge, in order to manifest their self-sufficiency in giving a verdict. The Judge condescends to hear the argument of a counsel, the jury listens to the judge's charge, and Your Excellency should, it seems to our "plain and homely" minds, listen on all subjects, to the conscientious advice of the sworn advisers, selected by yourself, for their "talents and integrity."

We have carefully read, as your Excellency recommended, the Constitutional Act, and, although your Excellency assures us, that by it "a House of Assembly and Legislative Council and a Lieut. Governor are appointed, but that it creates no Executive Council," yet we read so clearly, in three several places, almost the very same comprehensive words, viz: "With the consent of such Executive Council as shall be appointed by his Majesty, his heirs and successors, within such Province, for the affairs thereof," that we must believe some evil and irresponsible advisers have put into your Excellency's hands a mutilated copy of our Constitution. We cannot reconcile your present declaration with your reply to your late Executive Council, in which your Excellency distinctly admits, that the most liberal construction, which can possibly be put upon that act amounts to this: "that as an Executive Council was evidently intended to exist, the remnant of the old one ought not to be deemed totally extinct, until its successor was appointed. However this latent intention of His Majesty to create a Council for each of the Provinces of his Canadian dominions, was soon clearly divulged in a most important document, commonly called the *King's Instructions*," in which the Executive Council was regularly constituted and declared as follows: "Whereas we have thought fit, that there should be an Executive Council for assisting you, or the Lieutenant Governor or person administering the government of the said Province of Upper Canada" * * * "and to the end that our said Executive Council may be assisting you in all affairs relating to our service, you are to communicate to them, so many of our instructions, wherein their advice is mentioned to be requisite, and likewise all such others, from time to time, as you shall find convenient for our service to be imparted to them."

It is therefore as plain as law can be written, that the Constitutional Act provided for the appointment, by his Majesty, of an Executive Council, and that the King has, accordingly, created such a Council "to the end that they might be assisting to your Excellency in all affairs relating to His Majesty's service." This council so organized, is now as much a part of our constitution, as the great

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council of Parliament. The law allows the people to elect the House of Assembly, and gives the King the power of summoning whom he pleases to the Legislative and Executive Councils; all are alike created or provided for by this Act, though it does not specify by name, the particular individuals to constitute either of them.

We welcome the Concession of Your Excellency, to the merit of the able and enlightened SIMCOE, to whose memory we would cheerfully erect a monument. We never said that that justly revered representative of the King either did or could alter the law. But we still think, that an able and enlightened man, who assisted in passing the law, amidst all the debates upon it, and who was, first, commissioned to put it into operation amongst us, was, of all men, best qualified to explain that law, and its intended scope and application. SIMCOE, with all his personal knowledge about the law and law givers, declared that it was intended to give us, not a mutilated Constitution, but one "THE VERY IMAGE AND TRANSCRIPT OF THAT OF GREAT BRITAIN"; Your Excellency, on the contrary, after the lapse of nearly half a century, asserts, that neither the law nor the law givers (of whom SIMCOE was one) ever gave or intended to give what SIMCOE, in the name of the King, solemnly announced from the Throne.

In England, our fellow-subjects have a King, with his Executive Council (commonly called his Privy Council,) a House of Lords and a House of Commons: in this country we have corresponding institutions, viz: a representative of the King, with an Executive Council, a Legislative Council, and a House of Assembly. We only ask that these institutions should be put into operation in a manner corresponding to what is practised in England, and consequently that the Executive Council, under oath should as fully and freely advise Your Excellency on affairs here, as the Privy Council, under oath, advise His Most Gracious Majesty. This is what the Constitutional Act implies,—it is what SIMCOE announced,—it is what our liberties require, and what nothing, without our own consent, can lawfully abridge or take away.

If Your Excellency will not govern us upon these principles, you will exercise arbitrary sway,—you will violate our charter,—virtually abrogate our law, and justly forfeit our submission to your authority.

We have the honor to be, Sir, Your Excellency's

Most obedient, humble servants,

JESSE KETCHUM,
JAMES H. PRICE,
JAMES LESSLIE,
AND W. McGLASHAN,
JAMES SHANNON,
ROBERT McKAY,
M. McLELLAN,

TIMOTHY PARSONS,
WILLIAM LESSLIE,
JOHN MILLS,
E. T. HENDERSON,
JOHN DOEL,
JOHN E. TIMS,
Wm. J. O'GRADY.

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Front Street, 12th April, 1836.

SIR:

In answer to your letter of this day, in which, after referring to a paragraph in the Lieutenant Governor's reply to the address from the citizens of Toronto, you add, "as you and your late colleague are charged with having first entered into an arrangement clearly forewarning you of the extent to which you would be counselled, and

then altogether in a body disputing it, I write this communication that you may give any justification of your conduct you may desire." I beg leave to state, that the expressions to which you allude seem to be understood by the committee in a sense much more extensive than could have been intended by the Lieutenant-Governor, for though, as stated in my letter to you of the 16th ultimo, his Excellency frankly avowed his dissent from my views of the constitution, so far from his giving me the least reason to suppose that I was never to offer my advice except when called upon for it, or that my view of the practical administration of the government under the constitution was not again to be recurred to, he himself "suggested as an inducement to me to accept of a seat in the council, the *increased facilities* which by my place in the Executive Council would be afforded towards the more efficiently representing and urging my views, his Excellency declaring that his doors should, at all times, be open to me, and that he should be happy to listen and give his most serious consideration, to *any subject* which I might, *at any time*, think it important to lay before him;" and, indeed, the whole tenor of my official intercourse with his Excellency was inconsistent with the presumption that my advice was never to be given except it was asked.

Another circumstance which would seem to shew that a sense has been put upon the Lieutenant-Governor's words, which they could scarcely have been intended by him to bear, is, that his Excellency alleges "that we parted on a point of dry law," he could not, therefore, intend to impute to us the breach any agreement, either express or implied.

Again, his Excellency more than once declared, that he should not have been at all surprised had the representation proceeded from me; whereas, had it been any breach of a supposed previous understanding I was as much a party to such understanding as either of my colleagues Mr. Dunn, or Dr. Rolph, and of course equally involved in the consequences.

But not to multiply reasons, I need only add, as finally conclusive upon this subject, that His Excellency's words, understood in the sense alluded to, would be wholly inconsistent with the fact.—It never was understood, previous to our being sworn in, nor did any thing whatever transpire previous to that period, which could have given His Excellency, any ground for supposing it to be understood by us, either that we were not to offer an advice whenever we thought it proper to do so, or that the subject of the adoption of my views of the constitution was to be dropped. In fine, I can safely assert, that had His Excellency given me the slightest hint, that he expected I was never to offer my opinion except when required to do so I should have unhesitatingly rejected the proposal to join the Executive Council on such terms; but the whole tenor of the conversations which I had the honor of holding with His Excellency previous to my being sworn in, to say nothing of the express assurances above alluded to, excluded such a supposition from once suggesting itself to my mind.

I therefore feel bound to state, that any other construction put upon the terms on which I accepted office, than such as is to be gathered from the statement contained in those paragraphs of my former letter above quoted, is wholly erroneous.

I have the honor to be, Sir,

Your obedient humble servant,

(Signed) ROBERT BALDWIN.

P. Perry, Esq. Chairman }
of committee, &c. }

Committee Room, 13th April, 1836.

ROBERT BALDWIN, Esq., called in and examined.

1. On what day were the Honorable John Henry Dunn, Dr. Rolph and yourself sworn into office as Executive Councillors? On Saturday the 20th February last.

2. Was the Lieutenant Governor's note to you, a copy of which you appended to your letter to Mr. Perry of the 16th of March last, received by you previous to your being sworn in? It was not.

3. When was it received? At ten o'clock in the evening of the day on which we were sworn in—but I was given to understand that an accidental circumstance had occasioned its not having been delivered at an earlier period on the same day.

4. Is it such a note as you had reason to expect from the conference, mentioned by you in your letter to Mr. Perry, in which it was settled to be written? I conceive not. I cannot pretend to recollect the exact terms of the draft written by His Excellency on that occasion and then read to us, but I do not hesitate to say that it materially differed from the note I afterwards received. Dr. Rolph happened to be with me at the time I received the note, and I at once expressed my entire dissatisfaction with its contents, and proposed taking it back to the Lieutenant Governor and refusing to receive it. I was however persuaded by Dr. Rolph and Mr. Dunn, whom I called to see upon the subject, on the Monday after, that, as it could not be that His Excellency intended any thing disingenuous by us, and as the public would, no doubt, put a liberal construction upon the letter, it was better, more particularly as we had been actually sworn in, to let it pass without further difficulty. I must however add that when the draft was read over to us by His Excellency, as he did not seem quite satisfied with the wording, it was understood that he was at liberty to alter its phraseology; retaining, of course, its spirit and substance; and I certainly attributed the difference between the draft read to us and the note which I afterwards received, entirely to His Excellency's being unable from his want of practical acquaintance with political life, fully to comprehend the difficulties which I felt in yielding to his request to join his Council, and not to the slightest desire on his part to deviate from the spirit of the understanding. Such was certainly my impression at the time, but had I supposed it possible that such application of the unexpected terms in which His Excellency's note was couched, as is now attributed to His Excellency, could have been intended, I should certainly have returned the note, and insisted on such a one as I had reason to expect, or, if this had been refused, have resigned on that ground alone.

5. In what respect do you conceive the draft read to you and the note, afterwards sent, to differ? The draft was more explicit as the unfettered terms upon which I took office, and although I could not say it contained no declaration of the confidence His Excellency would place in our advice when "required," it was by no means the prominent feature in the draft; and I can safely say could only have been understood both by myself and my colleagues merely as a general expression of confidence, and not as a limitation of the duties expected of us; and I feel convinced that

His Excellency could have used it for no other purpose, because he had no reason to suppose that we could have understood it in any other—and to imagine the contrary would be to attribute to His Excellency that he made use of terms to us to which he applied one sense at a time that he knew us to receive them in another, without explaining the sense in which he intended them to be understood.

6. It appears from His Excellency's answer to the address of the House of Assembly of the 26th March, that the note which he wrote to you, of which the following is an extract: "I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it," was written during the negotiation between His Excellency and the Council previously to their taking office—and, in fact, was part of the negotiation, and implies that it contained the conditions of their taking office, and that they took office after the communication of that note, is that the case, and is that the true inference according to your understanding? For the facts I refer to my previous answers, and my letter to Mr. Perry of the 16th ultimo, and as to the inference it is of course a matter of opinion; but I cannot for my own part suggest any construction of the passage referred to, consistent with those facts.

7. Were any steps taken having a tendency to guard against the divulgement of the proceedings in Council upon this matter? The oath of office was administered to the under Clerks in the Council Office, it having been ascertained on inquiry, that they had not previously been sworn to secrecy.

8. It has been alleged that His Excellency, in his reply to the city corporation, intended to be understood as referring to the late Council, when he represented that the new theory, respecting the powers of the Executive Council "had been secretly promulgated," is such a charge warranted by the fact? As far as regards myself, I distinctly assert that it is not the fact, and I have no doubt that it is not the fact as respects any of my former colleagues.

DR. ROLPH *called in and examined.*

1. On what day were the late Executive Council, of which you were a member, sworn in? On the 20th of February last.

2. Have you any knowledge of a letter addressed by His Excellency to Mr. Robert Baldwin, relative to the terms on which you and your colleagues took office, if so, state what you know? I was present with Mr. Robert Baldwin, and the Honorable Mr. Dunn, on the nineteenth day of February last, at the Government House, when Mr. Robert Baldwin informed His Excellency that we were desirous, before joining the Executive Council, to receive a written assurance from His Excellency, of the unfettered terms upon which we entered into office, lest it should be supposed by the public that in doing so we had compromised the principles which we have heretofore avowed and acted on. To this suggestion His Excellency acceded and drafted a note to that effect, adding that as the phraseology might be improved, he would without delay prepare and transmit it to Mr. Baldwin, who would send copies to me and Mr. Dunn.

We were sworn into office in the afternoon of the following day, and I heard nothing more of this letter (except the uneasiness of Mr. Baldwin at not having received it) until ten o'clock at night, when I was in company with Mr. Baldwin and the letter was received.—Upon reading it Mr. Baldwin immediately noticed, as I did myself, the unexpected change, not only in the language but in the substance of the letter, and Mr. Baldwin would have returned it had I not expressed my reluctance to question the ingenuousness of the Lieutenant Governor, and enter upon a discussion which might seriously interfere with the harmony of the Council—Had I supposed that the word “require” would have been intended to abridge the great and unlimited latitude before given by His Excellency, I should certainly not have consented to be sworn into office had the letter been received on the nineteenth, and I should have resigned upon receiving a copy of it on the 22nd from Mr. Baldwin. The sole object of the letter and it was intended to embrace, was the admission that we joined the Council without changing our principles.

3. It appears from His Excellency's answer to the address of the House of Assembly of March 26th that the note which he wrote to Mr. Baldwin, of which the following is an extract: “I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it,” was written during the negotiation between His Excellency & the Council, previously to their taking office—and, in fact, was part of the negotiation, and implies that it contained the conditions of their taking office, and that they took office after the communication of that note, is that the case, and is that the true inference according to your understanding? I confess I understand the passage given me to read, to mean that the letter sent to Mr. Baldwin was the conclusion of the negotiation on the part of His Excellency, and intended to convey to Mr. Baldwin for the information of himself and his colleagues the terms upon which His Excellency would accept our services, and that after the receipt of that letter we went into office on those terms and then disputed them; but such, certainly, was not the case. The letter in question was wholly independent of the negotiation, and not even mentioned till it was so far concluded that we waited on His Excellency on the 19th merely to receive a more formal and united invitation into His Council. We did then receive such an invitation, and the object of the letter was then suggested by Mr. Baldwin, and premised by His Excellency, for the simple purpose of enabling Mr. Baldwin and his colleagues to repel any presumption of abandoning their principles on taking office.

4. Were any steps taken having a tendency to guard against the divulgement of the proceedings in Council upon this matter? The junior Clerks were sworn to secrecy, as it had not before been done.

5. It has been alleged that His Excellency in his reply to the city corporation, intended to be understood as referring to the late Council, when he represented that the new theory respecting the powers of the Executive Council “had been secretly promulgated,” is such a charge warranted by the fact? It is wholly unfounded as regards myself; and every thing which passed between me and other members of the Council satisfies me that it is equally unfounded as respects them.

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COPY.

To His Excellency Sir Francis Bond Head, Knight Commander of the Royal Hanoverian Guelphic Order, and of the Prussian Military Order of Merit, Lieutenant Governor of the Province of Upper Canada, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY.

We, the undersigned Grand Jurors, representing the Home District at the Spring Assizes now holding, respectfully beg to assure Your Excellency that the liberal policy designed to be pursued and the paternal solicitude manifested by His Majesty's Government towards this Province as communicated to the Legislature soon after your arrival here, have been hailed by us as the harbingers of our prosperity and happiness.

We greatly regret that a system of political excitement hath of late years been organized in this Province, engendering bitter animosities in the breasts of those whose welfare and happiness imperiously require that they should dwell together in amity; and producing party feuds, too frequently ending in breaches of the peace.

We are well aware, that the prevalence of this system has already produced results unfavorable to the development of our internal resources, and to the introduction among us of the redundant wealth & population of Great Britain; but the recent expressions of confidence in Your Excellency's administration, which we have heard and in which we cordially concur, lead us to hope that the people will not long remain blinded to their own interest; but will be convinced that the most effectual mode of serving themselves, consists in upholding the Constitution, and directing their attention to the improvement of the land we live in: rather than to the consideration of abstract questions of government, and of theoretical changes in our constitution; changes, in which very many well-educated members of the community, discover no elements of good; but discern, on the contrary, the seeds of discord and confusion, producing in due season, the dismemberment of this colony from the parent state, and the establishment therein, of democratic institutions, uncongenial to the habits and sentiments of its British population.

We would have felt a difficulty, particularly as our especial duty is of a judicial character only, in thus expressing our opinions to your Excellency, were we not confident, that they are participated in by a numerous body of the freeholders in the district we represent.

J. S. Macaulay, Foreman,

E. Moodie,
Wm. Crookshank,
Andrew Mercer,
G. W. Thomson,
Francis Boyd,
John Ellah,
Silas Burnham,
Thos. D. Harris,

Alex. Burnside,
Thomas Cooper,
Wm. Campbell,
W. Laughton,
Geo. Gurnett,
Geo. B. Willard,
E. C. Gapper.

A true copy,

(Signed) J. JOSEPH.

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GENTLEMEN,

If the important object I have in view were to obtain applause nothing could be more gratifying to my feelings than the approbation of so well educated a body of gentlemen as the Grand Jury of the Home distaict; but without offence, I must declare that the strict performance of my duty requires that I would neither be stimulated by popularity, nor deterred by clamour.

In maintaining the liberties of the inhabitants of this Province, but little has been left by our Sovereign, either to my judgment or discretion; and if it be true, "that the recent expressions of confidence in my administration which you have heard, and in which you cordially concur, lead you to hope that the people will not long remain blinded to their own interest," this happy effect has proceeded from no exertions of mine, but simply from my having repelled our enemies by pointing to the Constitutional Act of this Province. If that noble charter had not existed there can be no doubt but that the representative of His Majesty would have been overcome, and that the inhabitants of Upper Canada would now be under the ignominious tyranny of a secret metropolitan "cabinet"; but your constitution has proved to be impregnable, and, at this moment, no people bewail the fact more keenly than those who have lately been nearly crushed in their endeavours to undetermine it.

A true copy,

(Signed) J. JOSEPH.

SCHEDULE Of Documents forming Appendix TO REPORT.



- A.—Representation of Ex. Coun. to Lt. Governor, 4th March, 1836
- B.—Reply thereto. 5th do.
- C.—Robert Baldwin (Letter) to Peter Perry. 10th do. with copies annexed from Lt. Governor, to Robert Baldwin, 10th February, 1836, and latter's receipt thereof, 20th February, 1836.
- D.—Address from Council to Lt. Governor and His Excellency's reply thereto
- E.—Address from Public Meeting, Toronto, 20th of March, 1836, and His Excellency's reply.
- F.—"The King's Instructions."
- G.—Oath taken by Ex. Coun.
- H.—Address from H. of Assembly to the King on the subject of L. Coun. and a responsible Gov. 15th April, 1836.
- I.—Address from H. of Assembly to the King against interference with our local affairs, 3rd March, 1834.
- K.—Address of H. of Assembly to Lt. Governor on subject of an agreement between new Councillors, as to security in certain ex. and His Excellency's reply thereto
- L.—Evidence given before Select Committee of H. of Assembly, by R. B. Sullivan, Esq., 28th March, 1836, Hon. Augustus Baldwin, 11th April, 1836.
- M.—Address H. of Assembly to Lt. Governor on the subject of resignation of Ex. Coun. 14th March, 1836, and His Excellency's reply thereto.
- O.—Address of Assembly to Lieutenant Governor to remove the new Ex. Coun. from office, and His Excellency's reply thereto, March, 1836.
- P.—Schedule of late endowments of Parsonages and Rectories in this Province, 5th February, 1836, and Appendix of surrenders of land by Clergymen, &c. and of lands given in lieu.
- R.—Letter from J. Joseph, Private Secretary, to Peter Perry, Esq., on subject of Rejoinder from citizens, 4th April, 1836.
- S.—Rejoinder from citizens of Toronto to the reply of Lt. Governor—(See E.)—to their address of 25th March?
- T.—Letter from Robert Baldwin Esq. to Peter Perry Esq. relative to His Excellency's remarks to the City Corporation, 15th April, 1836, and evidence of Robert Baldwin, Esq. and Dr. Rolph.
- D.—Address from the Grand Jury to Lt. Governor, and His Excellency's reply.

TO THE KING'S MOST EXCELENT MAJESTY.

MOST GRACIOUS SOVEREIGN.

We, your Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly approach your Majesty with our renewed assurances of Loyalty and attachment to your Majesty's Person and Government. It is with pain we acknowledge how seldom it is we have to address your Majesty in the unmixed language of gratitude and thankfulness, and we have noticed the difficulties at this distance from your Majesty's immediate care, which attend the fulfilment of the most benevolent intentions.

We have now to pray your Majesty's patient and impartial attention to the history of our complaint against a sudden, abrupt and most ingracious denial by his Excellency of those indispensable, constitutional principles in our local government, the just preservation of which is, above all things, calculated to endear your Majesty to your Canadian people, and to strengthen the bond of union between this loyal and valuable portion of your Empire and the parent state. The Report of a Select Committee of your Majesty's faithful Canadian Commons which has, after mature consideration, been adopted by this House (and accompanies this address) will amply inform your Majesty upon all particulars; and we regret it should necessarily contain disclosures to your Majesty equally injurious to the interests and confidence of the people, and to the character of the Royal station in the Province. Under feelings of solicitude lest your Majesty's royal ear should be prepossessed against us by those who have easier and secret access to your Majesty and your Majesty's Ministers, we have prayed the aid of your Majesty's Imperial House of Commons, as will appear from the accompanying copy of our Memorial, in the hope that they will aid your Majesty in extending to us speedy and effectual measures for the redress of our wrongs, and for the maintenance of the honor and dignity of the Crown.

MARSHALL S. BIDWELL,

Commons House of Assembly, }
18th April, 1836.

Speaker.

MEMORIAL TO THE HOUSE OF COMMONS.

To the Honorable the Knights, Citizens, and Burgesses of the United Kingdom of Great Britain and Ireland, in Parliament assembled:—
May it please Your Honorable House.

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, after unavailing struggles for a series of years to obtain such an administration of our local affairs as would secure to the people of this Province, possessing "the very image and transcript of the British Constitution," the blessings of good government, are at length driven to appeal to the wisdom, justice, and magnanimity of your Honorable House, in the hope that your powerful intercession with His Majesty may yet redeem us from a condition every day becoming more ruinous and alarming. We are not unacquainted with the overwhelming influence of station and weight of authority which will be brought to bear against our exertions to procure redress; and without the interposition of your Honorable House we entertain a fear, grounded on the experience of the past, that His Majesty's ear will be so abused by secret despatches and personal detractions as almost to set at defiance the best directed intentions of His Majesty to arrive at the truth. And we desire to add, as a further difficulty, an inveterate disposition to adhere to what is called the Colonial system, under which our present condition has been produced, instead of accommodating it, as both wisdom and justice require, to the changing state and increasing wealth and population of the country.

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In answer to the address of this House to His Most Gracious Majesty, in the late session upon the subject of our grievances, we received as our new Lieutenant Governor, His present Excellency Sir Francis Bond Head, who by message communicated to the House the instructions he had received from His Majesty's Government for his guidance. But these instructions leave us under the same unsatisfactory and injurious system that has hitherto prevailed,—and we practically feel that the institutions of the country are so directed, their operations so abridged, and public functionaries so protected in misgovernment by their distance from their superiors, as to render illusive and abortive the most promising schemes framed in England for our amelioration. Upon the arrival of Sir Francis B. Head to represent His Most Gracious Majesty among the constitutional authorities of the Province, we were disposed to entertain the happiest expectations—and when his Excellency from the Throne invited us to render him "that loyal, constitutional, unbiassed and fearless assistance which your King expects, and which the rising interests of your country require;" and when we saw our often repeated dissatisfaction with the Executive Council removed, and the highest public confidence secured by the addition of the Honorable John Henry Dunn, Robert Baldwin and John Rolph, Esquires, we fully believed that we were about to enjoy under His Excellency, the full benefit of our charter, by a wise, impartial and constitutional administration of our affairs. The reign of universal thankfulness and tranquility under this change of things, was, we lament to state, of short duration.

The Country had always supposed that the Executive Council of the Province from time to time appointed by His Majesty, under the 31st Geo. 3rd, chap. 31, to advise His Majesty and his Representatives upon the affairs of the Province, actually discharged the important duties assigned to them by the constitution; in consequence whereof all public odium of the mismanagement of our affairs has been heretofore visited on the Executive Council, while every Lieutenant Governor has been acquitted upon the presumption of his being, as pleaded to us by Sir F. B. Head "a stranger lately arrived among us," and therefore unintentionally misled by corrupt advisers. But it has now come to light that the Executive Council have been almost limited in their duties to a Land Board and Board of Audit, while the affairs of the Province, so unsatisfactorily managed, seldom passed under their review or were submitted for their advice. It appears from the appendix to this memorial to which we refer Your Honorable House, and to which we earnestly pray a patient, candid and impartial regard, that the late Executive Council composed of the old Council with the aforesaid additions, after remaining 3 weeks in office under the old but concealed system of withholding from their advice the affairs of the province, addressed to His Excellency Sir F. B. Head the confidential representation hereto annexed, praying either that the affairs of the Province might be systematically submitted for their advice, preparatory to his Excellency's final and discretionary action thereon, or that they might be allowed to disabuse the public respecting the nature and extent of the duties confided to them. And the need of this request must have been injuriously felt, from the fact notorious to us, and to the country, that every act of His Excellency's administration proved either that the late Council had betrayed public confidence or that His Excellency followed the advice of other uncertain, unsworn and irresponsible persons, neither possessing nor entitled to political confidence.

In the above constitutional, just and reasonable representation made to his Excellency in official confidence under oath, his Excellency made the reply also appended hereto, and concludes, after denying the

Constitutional origin and duties of the Council, with the assurance to his Council, "that his estimation of their talents & integrity, as well as his personal regard for them, remain unshaken, and that he is not insensible of the difficulties to which he will be exposed, should they deem it necessary to leave him. At the same time should they be of opinion that the oath they have taken requires them to retire from his confidence, rather than from the principles they have avowed, he begs that on his account they will not for a moment hesitate to do so."

Under these circumstances the Council feeling themselves under the alternative of abandoning either their principles or their place, honorably chose the latter. The aforesaid representation and reply, His Excellency's answer to us accompanying the same, and various other popular explanations given by His Excellency to the public, with the public proceedings on the same, together with various other documents connected with the subject, and the adopted report of a Select Committee thereon, all are appended hereto, for the more full information, of your Honorable House, and the more ample communication of our wants and views.

It is with pain, disappointment and humiliation, we notice the reiterated declaration of His Excellency to conduct our affairs, without the advice of the Executive Council, according to his own will and pleasure, which his public acts have already proved to be arbitrary and vindictive.— And this view of his own sole ministerial power and authority with a nominal responsibility to Downing Street, he has sustained before the public by misstatements and misrepresentations so palpably opposed to candour and truth, as to destroy all hopes of further justice from his Government; and which is more fully set forth in the documents appended hereto.— Since the resignation of the late Council, His Excellency has formed another, composed of Robert Baldwin Sullivan, Esquire, and the Honorables William Allan, Augustus Baldwin and John Elmsley; neither enjoying nor entitled to the political confidence of the People or their Representatives. Upon the formation of this council, although R. B. Sullivan, Esq. was sworn in and appeared to the public as senior councillor, upon whom, in the event of the death or absence of His Excellency, might devolve the administration of the Government, yet a secret agreement was entered into, written in the Council Chamber by His Excellency himself, by which was to be defeated the apparent succession of the senior councillor to the administration of the Government. This arrangement was denied by His Excellency to us in his answer to our address on the subject; while on the other hand the facts so denied are proved by the testimony of R. B. Sullivan, Esq. and the Honorable Captain Baldwin, both of whom are still retained by His Excellency in the council. For other instances of his deviation from candour and truth, as well as of his utter unacquaintance with the nature of our Constitution and the mode in which it should be administered, we refer to the appended documents, wherein are also detailed other grievances of an urgent and serious nature; to all of which we humbly pray the serious, speedy and impartial attention of your Honourable House. Being denied the beneficial and constitutional operation of our local institutions for the management of our local affairs; being threatened with the exercise of the unadvised, arbitrary government of His Excellency, virtually irresponsible, and being satisfied that nothing but an open, entire and honorable abandonment of this policy, equally unconstitutional and pernicious, will ever restore our peace, welfare and good government; we have, in justice to the people, whose civil and religious interests we are solemnly bound fearlessly to vindicate, been obliged as a last resort, to stop (most reluctantly) the Supplies, and for the attainment of redress in these and other matters contained in the appended Report, we pray the aid of your Honorable House.

And as by inclination and by duty we are led and bound to do, we shall ever pray.

Commons House of Assembly,	MARSHALL S. BIDWELL,
18th April, 1836.	Speaker.

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